United States

Circuit Court of Appeals

For the Ninth Circuit.

4

Apostles on Appeal. (IN TWO VOLUMES.)

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation, Owner of the American Steamship "BEAVER,"

Appellant,

vs.

LEGGETT STEAMSHIP COMPANY, a Corporation, Claimant of the Steam Schooner "NE-CANICUM," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Appellee.

VOLUME I. (Pages 1 to 384, Inclusive.)

Upon Appeal from the Southern Division of the United States
District Court for the Northern District of California,
First Division.

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Appellee.

VOLUME I. (Pages 1 to 384, Inclusive.)

Upon Appeal from the Southern Division of the United States
District Court for the Northern District of California,
First Division,



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In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,513.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation, Owner of the American S. S. "BEAVER,"

Libelant,

VS.

The Steam Schooner "NECANICUM," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

LEGGETT STEAMSHIP COMPANY, a Corporation,

Claimant.

Praecipe for Apostles on Appeal.

To the Clerk of the Above-entitled Court:

Please prepare transcript of record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit upon the appeal heretofore perfected in this court, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

(1) All those papers required by Section 1 of Paragraph 1 of Rule 4 of the Rules of Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit;

- (2) All the pleadings in said cause and all the exhibits annexed thereto; [1*]
- (3) All the testimony and other proofs adduced in said cause, including the testimony taken at the trial, all depositions taken by either party and admitted in evidence, and all exhibits introduced by either party, said exhibits to be set up as original exhibits;
 - (4) The opinion and decision of the Court;
 - (5) The final decree and notice of appeal;
 - (6) The assignments of error.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Libelant and Appellant.

Service of the within Praecipe for Apostles on Appeal and receipt of a copy is hereby this 17th day of March, 1917.

W. S. BURNETT,
DENMAN & ARNOLD,
Proctors for Claimant.

[Endorsed]: Filed Mar. 17, 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2]

^{*}Page-number appearing at foot of page of original certified Transcript of Record.

Statement of Clerk U.S. District Court.

In the Southern Division of the District Court of the United States, Northern District of California, First Division.

TITLE OF CAUSE.

No. 15,513.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation, Owner of the American S. S. "BEAVER,"

Libelant,

VS.

The Steam Schooner "NECANICUM," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

LEGGETT STEAMSHIP COMPANY, a Corporation, Claimant. [3]

PARTIES.

Libelant: San Francisco & Portland Steamship Co., a corporation.

Respondent: Steam Schooner "Necanicum," her engines, boilers, etc.

Claimant: Leggett Steamship Company, a corporation.

PROCTORS

for

Libelant: Ira A. Campbell, Esq., and McCutchen, Olney & Willard.

Respondent and Claimant: William Denman, Esq., and Denman & Arnold.

1914.

January 2. Filed verified libel for damages, caused by collision, (\$45,000.00).

Issued monition for the attachment of the Steam Schooner "Necanicum," her engines, etc., which monition was afterwards, on the 6th day of January, 1914, returned and filed, with the following return of the U.S. Marshal endorsed thereon:

"In obedience to the within Monition, I attached the Steam Schr. 'Necanicum,' etc., therein described, [4] on the 2d day of January, 1914, and have given due notice to all persons claiming the same that this Court will, on the 13th day of January, 1914 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. I further return that I posted a notice of seizure on the herein named Steam Schr. 'Necanicum, etc.

I further return that I served a copy of the within Monition on Austin Keegan, Captain of the Steam Schooner 'Necanicum,' etc., the person in whose charge I found the within named Steam Schooner 'Necanicum,' etc., at Point San Pablo, Contra Costa County, California, on the 2d day of January, 1914.

C. T. ELLIOTT,
United States Marshal.
By T. F. Kiernan,
Office Deputy.

San Francisco, Cal., January 3d, A. D. 1914."

January 23. Filed Claim of Leggett Steamship
Company, a corporation, to the
Steam Schooner "Necanicum,"
etc.

Filed Answer of Leggett Steamship Company, a corporation.

March 9. Filed stipulation that the Steam Schooner "Necanicum" may be released upon the filing of a bond, in the sum of \$55,000. [5]

March 9. Filed Admiralty Stipulation (bond) in the sum of \$55,000, for release of Steam Schooner "Necanicum," with A. B. Hammond and W. H. Hammond as sureties thereon.

June 16. Filed Depositions of Walter N.

Beckwith et al. on behalf of Respondent, taken before Francis

Krull, U. S. Commissioner.

The Court, this day, made an order 15. October that the cause entitled Leggett Steamship Company, a corporation, vs. San Francisco and Portland Steamship Company, a corporation, No. 15,675, be consolidated with this cause, for hearing. The cases, as consolidated, this day came on for hearing, in the District Court of the United States, for the Northern District of California, San Francisco, before the Honorable M. T. Dooling, Judge, after hearing duly had, the cause was continued until October 16th, for further hearing. Hearings were had on October 16th, 20th, 21st, and 22d, respectively, on which last day, the matters were ordered submitted, on briefs to be filed.

October 20. Filed Deposition of Theodore J.

Hewitt, taken on behalf of libelant, before John P. Hannon, a notary public, at Portland, Oregon.

21. Filed Deposition of Alfred F. Pillsbury, taken on behalf of libelant, before Francis Krull, U. S. Commissioner. [6]

1915.

July 19. Filed five volumes of testimony, taken in open court.

August 19. The causes, as heretofore consolidated, this day, came on for argument, after which the causes were ordered submitted.

December 10. The Court this day filed an opinion, in which it was ordered that the Libel in this cause (15,513), be dismissed; holding the "Beaver" (owned by San Francisco & Portland S. S. Co.) responsible for collision, and referring cause to U. S. Commissioner to ascertain and report damage sustained by the "Necanicum."

13. Filed Final Decree.

1916.

June 12. Filed Notice of Appeal.

Filed Bond on Appeal in the aggregate sum of \$1,000, with the National Surety Company, as surety. Filed Assignment of Errors. [7]

In the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,513.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation, Owner of the American S. S. "BEAVER,"

Libelant,

vs.

The Steam Schooner "NECANICUM," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

Libel.

To the Honorable M. T. DOOLING, Judge of the United States District Court for the Northern District of California:

The libel of the San Francisco & Portland Steamship Company, a corporation, against the steam schooner "Necanicum," her engines, boilers, boats, tackle, apparel and furniture, in a cause of collision, civil and maritime, alleges as follows:

I.

That the San Francisco & Portland Steamship Company, libelant herein, is a corporation duly organized and existing under and by virtue of the laws of the State of Utah, and is and was during all times herein mentioned the owner of the steamship "Beaver," an American vessel of [8] 4,507 tons gross register, whereof E. W. Mason late was and now is master.

II.

That the steam schooner "Necanicum," respondent herein, is an American vessel of —— tons gross register, and is now in the port of San Francisco, State of California, and within the jurisdiction of this Honorable Court.

III.

That heretofore, on the 30th day of October, 1913, at about the hour of 2:18 P. M., said steamship "Beaver" was run into and seriously damaged by said steam schooner "Necanicum"; that prior to and at the time of said collision said steamship "Beaver" was proceeding southward along the coast of California, between Point Arena and Point Reyes, on a course approximately South 50° East, and on or about the hour of 2:14 P. M., the officers of said "Beaver" sighted said "Necanicum" ahead, from a mile to a mile and a half distant, bearing slightly on the "Beaver's" port bow, and proceeding northward on a course approximately parallel with that of said "Beaver"; that upon sighting said steam schooner "Necanicum," the master of said steamship "Beaver" blew a one blast passing whistle and altered her course to port; that no answer to said signal was received from said "Necanicum," and thereafter, approximately half a minute later, the master of said "Beaver" blew a second one blast passing whistle, which whistle was answered by said "Necanicum" with a like signal, thereby consummating an agreement that said vessels were to pass on the port side of each other; that immediately after said passing signals had been exchanged, [9]

however, said "Necanicum" was observed by the officers of said "Beaver" not to be altering her course to starboard, as required by said signals, but swinging to port toward the course of said "Beaver"; that thereupon the engine of said "Beaver" was reversed full speed astern and her helm put hard aport, and, simultaneously therewith, the master of said "Beaver" gave three blasts of her whistle, indicating to said "Necanicum" that the engine of said "Beaver" was working full speed astern; that, in the meantime, without responding to said three blasts, said "Necanicum" continued to swing to port toward said "Beaver," and notwithstanding the reversing of said "Beaver's" engine and the hard aporting of her helm, she was unable to avoid said collision, and said "Necantcum" struck said "Beaver" on the latter's port bow, at nearly right angles, approximately twelve feet abaft her stem; that immediately thereafter said "Necanicum" backed away, and shortly became lost in the fog which afterward set in.

That from prior to said "Beaver" passing Point Arena the day was fair, and a light drifting fog at various short intervals prevailed, during all of which time the officers and lookout of said "Beaver" could see a distance of from not less than two to ten miles, and, during all of which times, as conditions required, the automatic fog signal of said "Beaver" was regularly blown, and a moderate speed maintained, as required by law.

IV.

That at all of said times proper and competent

officers were on watch and a proper and efficient lookout [10] was maintained on said "Beaver"; that said collision was not caused by any fault or neglect in the navigation of said "Beaver," as required by the International Rules of Navigation, but was solely caused by the careless and negligent navigation of said "Necanicum" in that she did not have on watch proper and competent officers, and did not maintain a proper and efficient lookout, and did not alter her course to starboard so as to pass said "Beaver" to port, as required by said passing signals, and did not stop and reverse on receiving said signals from said "Beaver," and did not alter her course to starboard when danger of collision became imminent.

V.

That by reason of said collision, said "Beaver" was seriously and extensively damaged about her bow, necessitating her drydocking and repair, to libelant's damage for said drydocking and repairs, and for loss of earnings while being laid up for repairs, in the approximate sum of forty-two thousand (42,000) dollars.

That further, by reason of said collision, a general average resulted on account of general average expenses and disbursements incurred by libelant, in the approximate sum of three thousand (3,000) dollars.

VI.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

[11]

WHEREFORE, libelant prays that process in due form of law, according to the practice of this Honorable Court, may issue against the said steam schooner "Necanicum," her engines, boilers, boats, tackle, apparel and furniture, and that she may be condemned and sold to answer for the damages alleged in this libel, and that this Court will hear the evidence which libelant will adduce in support of its libel, and will enter a decree in favor of libelant for the above-mentioned damages, and will order the same to be paid and satisfied out of the said proceeds of the said steam schooner "Necanicum," together with interest and costs of libelant, and will otherwise right and justice administer in the premises.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Libelant. [12]

State of California,

City and County of San Francisco,—ss.

H. W. Deans, being first duly sworn, deposes and says:

That he is an officer of libelant, to wit, assistant to general manager, and agent in the State of California; that he makes this verification for and on behalf of said libelant; that he had read the foregoing libel, and knows the contents thereof, and believes the same to be true.

H. W. DEANS.

Subscribed and sworn to before me this 2d day of January, 1914.

[Seal] FRANCIS KRULL,
Deputy Clerk U. S. District Court, Northern District
of California.

[Endorsed]: Filed Jan. 2, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [13]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 13th day of January, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable M. T. DOOLING, Judge.

#15,513.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY

VS.

Stm. Schr. "NECANICUM," etc.

Minutes of Court—January 13, 1914—Proclamation.

The U. S. Marshal having returned upon the monition issued herein that "In obedience to the within monition, I attached the Steam Schr. 'Necanicum,' etc., therein described, on the 2d day of January, 1914, and have given due notice to all persons claiming the same that this Court will, on the 13th day of January, 1914 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. I further return that I posted a notice of seizure on the herein named steam schr. 'Necanicum,' etc.'

On motion of J. McKeon, Esqr., proclamation was duly made for all persons having anything to say to

appear and answer the Libel herein, and on like motion claimant herein was granted ten days to plead to said libel. [14]

In the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,513.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation, Owner of the American S. S. "BEAVER,"

Libelant,

VS.

The Steam Schooner "NECANICUM," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

Claim of the Leggett Steamship Company, a Corporation, etc.

And now Leggett Steamship Company, a corporation, owner of the steam schooner "Necanicum," her engines, etc., intervening for its own interests in said steamer "Necanicum," etc., appears before this Honorable Court and makes claim to the said steamship, her engines, etc., as the same are attached by the marshal, under process of this Court, at the instance of San Francisco & Portland Steamship Company; and the said Leggett Steamship Company avers that it was in possession of the said steamship at the time of the attachment thereof, and that it is the true and bona fide owner of the said steamship, and that no other person is the owner thereof.

WHEREFORE it prays to defend accordingly.

LEGGETT STEAMSHIP COMPANY.

By W. S. BURNETT,

Vice-President.

Subscribed and sworn to this 22d day of January, 1914, by W. S. Burnett, [15] the vice-president of the said Leggett Steamship Company, acting on behalf of the said steamship company, before me.

[Seal] M. I. LAWRENCE.

A Notary Public in and for the City and County of San Francisco, State of California.

My commission expires January 27, 1914.

[Endorsed]: Filed Jan. 23, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [16]

In the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,513.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation, Owner of the American S. S. "BEAVER,"

Libelant,

VS.

The Steam Schooner "NECANICUM," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

Answer.

To the Honorable M. T. DOOLING, Judge of the United States District Court, for the Northern District of California:

The answer of the Leggett Steamship Company, a corporation, claimant of the steam schooner "Necanicum," to the libel herein admits, alleges and denies as follows:

I.

Alleges that said claimant is a corporation duly organized and existing under the laws of the State of New Jersey, and that at all times in the said libel mentioned, and at the time of the seizure of the said vessel, it was the owner thereof.

II.

Answering paragraph III of the said libel, claimant alleges that it is ignorant of the exact course of the steamship "Beaver," as she proceeded southward along the coast of California between Point Arena and Point Reyes, wherefore it calls for proof thereof if the same be pertinent; denies that at the hour of 2:14 P. M., or thereabouts, the officers of said "Beaver" sighted the said "Necanicum" a mile to a mile and a half ahead, or at all, bearing slightly, or at all, on the "Beaver's" port [17] bow; alleges that it was ignorant of the exact course of the "Beaver," wherefore it is unable to answer the allegation that the courses were approximately parallel and calls for proof of the same if the same be pertinent; answering the allegations concerning the signals alleged to have been given by the steamship

"Beaver," denies that the master of said "Beaver" blew a one blast passing signal prior to any passing signal given by said "Necanicum," and in that behalf alleges that the only signal given by said "Beaver" was a one-blast signal in reply to a twoblast signal given by the said "Necanicum" at the time that the said "Beaver" was bearing from the said "Necanicum" a very considerable distance upon her starboard bow; denies that two one-blast passing signals were blown by said "Beaver"; denies that said "Necanicum" answered a one-blast passing signal with any one-blast passing signal, thereby or at all consummating an agreement that said vessels were to pass on the port side of each other; alleges that it is ignorant of the observations of the officers of the "Beaver": admits that at the time the "Beaver" blew one whistle in response to the two whistles of the "Necanicum," the "Necanicum" was swinging to port but not towards the course of the "Beaver" as it was when the two whistles were blown from the "Necanicum" and swung towards the court of the "Beaver" only after said "Beaver" had ported her helm instead of starboarding her helm in response to the two whistles of the "Necanicum"; denies that thereupon the engine of the "Beaver" was reversed and put full speed astern, and alleges that it is ignorant whether the "Beaver's" helm was put hard aport, wherefore it calls for proof of the same if the same be pertinent; alleges that it is ignorant as to whether simultaneously therewith the master of the "Beaver" gave three blasts of her whistle; denies that in the meantime and without responding, or

without responding, [18] to the said three blasts. said "Necanicum" continued to swing to port towards the said "Beaver," and denies that notwithstanding the reversing of the said "Beaver's" engine and the hard aporting of her helm, or at all, she was unable to avoid the said collision; denies that the "Necanicum" struck the said "Beaver" on the latter's port bow, at nearly right angles, or at all, and in that behalf alleges that the "Beaver," coming at a considerable rate of speed, struck the "Necanicum" on the "Necanicum's" bow, smashing the same in from below the water-line through to the full height of her bulwarks and by the force of the said collision disabling her steering gear; alleges that it is ignorant of the fog conditions experienced by the "Beaver" from prior to passing Point Arena up to twenty minutes of the said collision, wherefore it calls for proof of the same if the same be pertinent; admits that thereafter, at short intervals, a light drifting fog prevailed, and alleges that at other intervals a heavier fog prevailed; denies that during all of which time the officer or lookout, or either of them, or any of them, of the said "Beaver" could see a distance of from not less than two to ten miles, and in that behalf alleges that during much of the said time the officers and lookout could not see a distance of over a quarter of a mile and at times could not see a distance of one thousand feet; denies that during all of the times preceding the collision, or any of them, the automatic fog signal of the said "Beaver" was regularly blown; denies that during any of the said time a moderate speed was maintained by said "Beaver,"

as required by law, or at all.

TTT.

Answering article IV of said libel, denies that at all or any of the said times proper and competent officers were on watch and a proper and efficient lookout or such a lookout was [19] maintained on said "Beaver"; denies that said collision was not caused by any fault or neglect or either of them, in the navigation of the said "Beaver" as required by the International Rules of Navigation, or at all; denies that the collision was caused solely or at all by the careless and negligent navigation, or either of them, of the said "Necanicum," in that she did not have on watch proper and competent officers and did not, or did not, maintain a proper and efficient lookout, and did not, or did not, alter her course to starboard so as to pass the said "Beaver" to port, as required by the said passing signals, or at all, and that, or that, she did not stop and reverse, or either of them, on receiving the said signals of the said "Beaver"; and that, or that, she did not alter her course to starboard when danger of collision became imminent.

IV.

And for a separate defense to said libel claimant alleges that although the bow of the "Necanicum" was smashed in and her steering gear disabled by the said collision, as aforesaid, the steamer "Beaver" did not stay by the "Necanicum" until the master of the steamer ascertained that the "Necanicum" had no further need of assistance and to render to the other vessel, her master and crew, such assistance as may have been practicable and as may be necessary

in order to save them from any danger caused by the collision, or at all, but, despite the said injuries to said "Necanicum," he immediately steamed away at full speed, leaving the said "Necanicum" so disabled in the fog; that at the said time the said steamer "Beaver" could have stayed by the said steamer "Necanicum" without serious danger to said "Beaver," her crew and passengers, or any of them.
[20]

V.

Answering article V of said libel, claimant alleges that it is ignorant of all the allegations of said article, wherefore it calls for proof of the same if the same be pertinent.

VI.

Denies that all and singular the premises are true, save as hereinabove admitted.

WHEREFORE claimant prays that libelant take nothing by its libel on file herein and that the libel be dismissed, and that claimant recover judgment for its costs.

W. S. BURNETT,
WILLIAM DENMAN,
DENMAN & ARNOLD,
Proctors for Claimant.

State of California, City and County of San Francisco,—ss.

W. S. Burnett, being first duly sworn, deposes and says:

That he an officer of claimant, to wit, vice-president; that he makes this verification for and on behalf of said claimant; that he has read the foregoing

answer and knows the contents thereof, and believes the same to be true.

W. S. BURNETT.

Subscribed and sworn to before me this 22d day of January, 1914.

[Seal]

M. I. LAWRENCE,

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires January 27, 1914.

Due service and receipt of a copy of the within Answer is hereby admitted this 23d day of January, 1914.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Libelant.

[Endorsed]: Filed Jan. 23, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [21]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 15th day of October, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable M. T. DOOLING, Judge.

No. 15,513.

SAN FRANCISCO AND PORTLAND S. S. CO., a Corporation,

VS.

Steam Schr. "NECANICUM," etc.

Minutes of Trial—October, 15, 1914.

This cause this day came on regularly for hearing, Ira A. Campbell, Esq., appearing as proctor for libelant, and Wm. Denman, Esq., as proctor for claimant. At request of both parties, the Court ordered that the cause entitled Leggett Steamship Company, a Corporation, vs. San Francisco and Portland Steamship Company, a Corporation, No. 15,675, be, and the same is hereby, consolidated with this cause for hearing.

Mr. Campbell and Mr. Denman stated their respective positions in these causes.

Thereupon Mr. Campbell called E. W. Mason, who was duly sworn and examined on behalf of libelant and introduced in evidence certain exhibits, which were filed and marked Libelant's Exhibits 1 (photograph), 2 (chart), and 3 (photograph).

Mr. Denman, during the examination of Mr. Mason, introduced in evidence a certain exhibit, which was filed and marked Claimant's Exhibit "A" (photograph).

Thereupon, the Court ordered that the further hearing of these causes, be, and the same is hereby, continued until October 16th, 1914, at 10 o'clock A. M. [22]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 16th day of October, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable M. T. DOOLING, Judge.

No. 15,513.

SAN FRANCISCO AND PORTLAND S. S. CO., a Corporation,

VS.

Steam Schnr. "NECANICUM," etc.

Minutes of Trial—October 16, 1914.

The hearing of this cause, as consolidated with cause No. 15,675, this day was resumed. Ira A. Campbell, Esq., appearing for libelant, and Wm. Denman, Esq., appearing for respondent. W. E. Mason resumed the stand on behalf of libelant and was further examined. Mr. Campbell then called Joseph W. Ettershank, K. Townsend, C. F. Parker and Walter Bryning, who were each duly sworn and examined on behalf of libelant. Mr. Campbell then introduced in evidence certain exhibits, which were filed and marked Libelant's Exhibits 4 (photograph), 5 and 6 (drawings). Mr. Denman then called J. F. Clemens, who was duly sworn and examined on behalf of respondent, and introduced in evidence certain exhibits, which were filed and

marked Claimant's Exhibits "B" (log), "C," "D," "E," "F," and "G" (photographs). Thereupon, the Court ordered that the further hearing of this cause be, and the same is hereby, continued until October 20th, 1914, at 10 o'clock A. M. [23]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 20th day of October, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable M. T. DOOLING, Judge.

No. 15,513.

SAN FRANCISCO & PORTLAND S. S. CO., a Corporation,

vs.

Steam Schnr. "NECANICUM," etc.

Minutes of Trial-October 20, 1914.

This cause, as consolidated with cause No. 15,675, this day came on regularly for further hearing. Ira A. Campbell, Esq., appearing as proctor for libelant and Wm. Denman, Esq., as proctor for respondents. Mr. Campbell called George Roffler and David W. Dickie, who were each duly sworn and examined on behalf of libelant. Thereupon, on motion of Mr. Campbell, the deposition of Theodore J. Hewitt was opened, filed and introduced in evidence.

Mr. Campbell then called Frank H. Evers, who was duly sworn and examined on behalf of libelant, and introduced in evidence certain exhibits, which were filed and marked Libelant's Exhibits 7 (photograph), 8 (drawing), 9, 10 (blue-prints), and 11 (log-book), and thereupon rested the cause of libelant.

Mr. Denman then called Christian Emanuelson and W. Pendergast, who were each duly sworn and examined on behalf of claimant and introduced in evidence certain exhibits, which were filed and marked Claimant's Exhibit "H" (report), and "I" (drawing).

Thereupon, the hour of adjournment having arrived, the Court further ordered that the hearing of this cause continued until October 21st, 1914, at 10 o'clock A. M. [24]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the court-room thereof, in the City and County of San Francisco, on Wednesday, the 21st day of October, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable M. T. DOOLING, Judge.

No. 15,513.

SAN FRANCISCO & PORTLAND S. S. CO., a Corporation,

VS.

Steam Schnr. "NECANICUM," etc.

Minutes of Trial—October 21, 1914.

This cause, as consolidated with cause No. 15,675, this day came on regularly for further hearing. Ira A. Campbell, Esq., appearing for libelant and Wm. Denman, Esq., for respondent. Mr. Denman called E. G. Clough, Charles Ottenhause, G. W. Slater, Peter Christensen, Edward S. Hough and John H. Pinder, who were each duly sworn and examined on behalf of respondent, and introduced in evidence certain exhibits, which were filed and marked Claimant's Exhibits "J" (photograph), "K" and "L" (drawings).

Mr. Campbell introduced in evidence certain exhibits, which were filed and marked Libelant's Exhibits 12 (log), 13, 14 and 16 (drawings).

Thereupon, the hour of adjournment having arrived, the Court ordered that the further hearing of this cause continued until October 22d, 1914, at 3 o'clock P. M. [25]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the court-room thereof, in the City and County of San Francisco, on Thursday, the 22d day of October, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable M. T. DOOLING, Judge.

No. 15,513.

SAN FRANCISCO & PORTLAND S. S. CO., a Corporation,

vs.

Steam Schnr. "NECANICUM," etc.

Minutes of Trial—October 22, 1914.

The hearing of this cause, as consolidated with cause No. 15,675, this day came on regularly for further hearing. Ira A. Campbell, Esq., appearing for libelant and Wm. Denman, Esq., for respondent. Mr. Denman called G. Peterson, R. B. Seike and A. T. Jones, who were each duly sworn and examined on behalf of claimant and introduced in evidence the depositions of Walter N. Beckwith, George A. Olsen and Austin Keegan (one volume), and recalled Peter Christensen for further examination and thereupon rested.

Mr. Campbell then called H. W. Deans, who was duly sworn and examined on behalf of libelant and introduced in evidence the deposition of Alfred F. Pillsbury and certain exhibits, which were filed and marked Libelant's Exhibits 16 (affidavit), 17 (compass guide), and 18 (memo), and rested.

Thereupon, by consent of all parties, this cause was submitted to the Court on Briefs to be filed.

[26]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the court-room thereof, in the City and County of San Francisco, on Friday, the 19th day of August, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable M. T. DOOLING, Judge.

No. 15,513.

SAN FRANCISCO & PORTLAND S. S. COM-PANY

VS.

Stm. Sch. "NECANICUM," etc.

Minutes of Trial—August 19, 1915.

This cause, as heretofore consolidated with the cause entitled "Leggett S. S. Co., a Corporation, vs. San Francisco & Portland S. S. Co.," and numbered 15,675, came on regularly this day for argument as to the issues herein and testimony taken. Thereupon, after hearing Ira A. Campbell, Esq., proctor for libelants, and Wm. A. Denman, Esq., proctor for respondents, the Court ordered said matter submitted. [27]

In the District Court of the United States, in and for the Northern District of California, First Division.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation, Owner of the American S. S. "BEAVER,"

Libelant,

VS.

The Steam Schooner "NECANICUM," Her Engines, Boats, Tackle, Apparel and Furniture, Respondent.

Depositions of Walter N. Beckwith et al., Taken Before U. S. Commissioner Krull.

BE IT REMEMBERED that on Friday, April 17th, Tuesday, April 28th, Monday, May 11th, and Tuesday, May 12th, 1914, pursuant to the stipulation hereunto annexed, at the offices of Messrs. Denman & Arnold, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, duly commissioned to take acknowledgments of bail and affidavits, etc., Walter N. Beckwith, John T. Gannan, George A. Olsen and Austin Keegan, witnesses on behalf of the respondent.

Ira A. Campbell, Esq., appeared as proctor for the libelant, and William Denman, Esq., appeared as

proctor for the respondent, and the said witnesses having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, did [28] thereupon depose and say as is hereinafter set forth:

(It is hereby stipulated and agreed by and between the proctors for the respective parties, that the deposition of Walter N. Beckwith, John T. Gannan, George A. Olsen, and Austin Keegan may be taken de bene esse on behalf of the respondent, at the office of Messrs. Denman & Arnold, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, on Friday, April 17th, Tuesday, April 28th, Monday, May 11th, and Tuesday, May 12th, 1914, before Francis Krull, United States Commissioner for the Northern District of California, and in shorthand by Herbert Bennett.

It is further stipulated that the depositions when written out, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of the taking said depositions, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witnesses and the signing thereof is hereby expressly waived.) [29]

Deposition of Walter N. Beckwith, for Claimant.

WALTER N. BECKWITH, called for the claimant, sworn.

Mr. DENMAN.—Q. Mr. Beckwith, what is your occupation? A. Master mariner.

- Q. How long have you been a master mariner?
- A. At intervals along the past 13 years.
- Q. How old are you now? A. 33.
- Q. What ship are you on?
- A. The steamer "Necanicum" as mate.
- Q. Were you on the steamer "Necanicum" in the month of October, 1913? A. Yes, sir.
 - Q. On the 30th of that month? A. Yes, sir.
- Q. What position did you have on the "Necanicum" on the 30th of October? A. First mate.
- Q. That was on the day of the collision with the "Beaver"? A. Yes, sir.
 - Q. What was the condition of the weather?
 - A. Passing fogs.
- Q. First, let me ask you something about the "Necanicum," what type of vessel is she?
 - A. Wooden steam schooner of a late pattern.
 - Q. How long is she?
- A. 175, 176 feet, something like that; between 170 and 180 feet.
 - Q. And about what is her beam?
 - A. I should judge about 35 or 40 feet.
 - Q. And about what does she draw?
 - A. Maximum or minimum?
 - Q. Give both of them?
 - A. About four feet forward light, and about 16

(Deposition of Walter N. Beckwith.) feet aft; loaded she will draw 16 to 18 feet, 18 feet aft.

Mr. CAMPBELL.—Q. How much will she draw aft when light? [30] A. About 16 feet.

Q. And loaded 16 to 18 feet?

A. 18 feet to 19 feet.

Mr. DENMAN.—Q. What was she drawing on this day?

A. I should judge about 16 and four; I have no way of telling, only from information on previous trips.

Q. Based on your experience with her?

A. Yes, sir, my familiarity with her.

Q. Where had you come from? A. San Pedro.

Q. Where were you bound? A. Eureka.

Q. I am speaking now of the afternoon of the collision? A. Yes, sir, Eureka.

Q. About what time in the afternoon did you first see—where were you from one o'clock until three o'clock on that day?

A. At the time of the collision we were to the northward of Point Reyes.

Q. Where were you personally between one and three o'clock on that day?

A. I took the bridge at half-past 12 and was relieved from duty at six o'clock.

Q. And during the time the collision occurred?

A. Yes, sir.

Q. Where did you first see the "Beaver"?

A. On our starboard bow seven or eight miles away.

- Q. At about what time was this?
- A. Shortly before two o'clock, I should judge 1:55; something like that, or say 1:50.
 - Q. How long did you continue to see her?
 - A. Several minutes.
 - Q. What happened then?
- A. In the meantime I was relieved at two o'clock, four bells struck and a small fog bank set in between us, between the approaching ship and ourselves.
- Q. How was the fog condition about your vessel, heavy or light?
 - A. Light, just banks passing. [31]
 - Q. Did you get any fog whistles from her?
 - A. No, sir, heard none.
 - Q. When did you next see her?
 - A. Two or three minutes previous to the collision.
 - Q. Where was she when she came in sight?
- A. She was on the starboard bow, her bearing had widened.
 - Q. What, if any, orders did you give at that time?
 - A. At the time I seen her?
 - Q. Yes? A. I starboarded my helm.
 - Q. What did you say?
- A. Starboard your helm, and sounded two blasts of the steam whistle denoting my intention of passing him on his starboard side.
- Q. Whereabouts on the bridge were you at this time? A. Both sides.
 - Q. Walking back and forth?
 - A. Backwards and forwards; yes, sir.

- Q. Did you get any response from him?
- A. The response was not discernible to the ear.
- Q. Did you see anything from him?
- A. I seen evidence of steam or something from his whistle, I do not know what it was, making no sound.
 - Q. How many blasts as far as indicated by sight?
 - A. I could not tell, I surmised it was one.
 - Q. What happened?
- A. As he altered his course denoting he was crossing our bow, or attempting to, the captain signalled for full speed astern, sounding three blasts denoting her engines were going astern full speed.
 - Q. Did he give any other order at this time?
 - A. The captain?
 - Q. Yes?
- A. Not to my knowledge; I was busily engaged [32] otherwise.
- Q. Did he give any order to the helmsman, the man at the wheel?
- A. I could not swear to what was said or passed between them. My time was taken up otherwise.
 - Q. What did you do?
- A. Called the second mate out; instructed the men to assist the second mate in taking the log in; called the sailors out of the forecastle, got the watch out; also got the men out of the life-boat who were repairing the life-boat, washing and painting.
 - Q. How readily does your vessel answer the helm?
 - A. As the average steam schooner of her type.
- Q. Tell me what has she got, a right-hand or left-hand propeller.A. Right-hand propeller.

- Q. What is the effect on her course when you give full speed astern and as you continue ahead through the water with diminishing speed?
- A. When a vessel gathers sternway with a right-hand propeller it draws her stern to port.
- Q. As you are going ahead before you stop does your head turn to starboard or port?
- A. It would be with the helm, the helm would control that.
- Q. Suppose the helm was straight ahead which way would the engine throw you, or do you know—have you ever tried it?
- A. No, sir, I cannot answer that question authentically; I have an opinion, but it might be very much out.
- Q. Had you succeeded in reducing your speed between the time that the order full speed astern was given and the collision?
- A. Yes, sir; rapidly astern, the vessel was going rapidly astern.
- Q. You mean by that you had sternway at the time of the collision? A. Yes, sir. [33]
- Q. What can you say as to the speed of the "Beaver" at the moment of impact?
- A. She was going at a rapid rate of speed; I should think from about six to eight knots an hour ahead.
 - Q. How could you tell that?
- A. That is merely estimation from the force of the impact, the jar of the collision; also by the foam that was thrown up from the bow's spray.

- Q. Did she stop at any time? A. No, sir.
- Q. What happened immediately after the collision?
- A. She passed on having full speed; she was out of sight in a few minutes, a couple or three minutes.
 - Q. What did you do?
- A. Ascertained the damage done to our vessel and the captain turned around and proceeded for San Francisco.
 - Q. Did the "Beaver" at any time come back?
 - A. No, sir.
- Q. Did you examine the injuries to the bow of the "Necanicum"? A. Yes, sir.
 - Q. What were the injuries to the bow?
- A. The stem was demolished, hawser-pipe crushed and anchor bent and driven into the wood, port anchor.
 - Q. Her port anchor?
 - A. Yes, sir; port hawser-pipe was crushed.
- Q. On which side of the bow did the crushing occur?
- A. The most damage was done stem, done to port; port hawser-pipe crushed and anchor bent.
 - Q. That is port anchor? A. Yes, sir.
 - Q. You have patent anchors, have you?
 - A. Yes, sir.
- Q. And that anchor protrudes from the port, does it not? A. Yes, sir; from the hawser-pipe.
- Q. Could you tell what portion or which side of the hawser-pipe [34] was injured, the aft or forward side? A. All sides.

- Q. Could you tell where the crushing strength had been applied?
 - A. Aft, the anchor was shoved aft, decidedly aft.
 - Q. Was there any injury to the starboard anchor?
 - A. No, sir.
 - Q. Any scratches on the starboard side?
 - A. No, sir.
- Q. At what angle do you think the two vessels came together? A. Between 33 and 48 degrees.
- Q. What lookout did you have, if any, on the vessel?
- A. I had a sailor stationed on the forecastle-head at the time the fog first put in an appearance.
 - Q. About 20 minutes before the collision?
 - A. Yes, sir, more than 20; all of 20.
 - Q. Who was he? A. Chris Emanulsen.
 - Q. A competent man?
 - A. Very competent man.
- Q. When you sent him out there you had already seen the "Beaver"? A. Yes, sir.
- Q. Where was he when the "Beaver" came into sight? A. The first or second time?
 - Q. The second time? A. On the lookout.
 - Q. What happened then?
- A. He reported her approaching on the starboard side sounding no blasts of his fog whistle.
 - Q. Are you going to sea to-morrow?
 - A. I believe so.
 - Q. On the "Necanicum"? A. I believe so.
 - Mr. DENMAN.—That is all.

Cross-examination.

Mr. CAMPBELL.—Q. Have you the "Necanicum's" bridge log? A. No, sir.

Q. Where is it? A. Aboard the ship.

Mr. CAMPBELL.—I would like to have it produced. I will [35] have to ask for a continuation of the examination until it is produced.

- Q. Did you make any report to the Inspectors?
- A. I did.
- Q. Did you keep a copy of it?
- A. I kept it in my mind.
- Q. Did you keep a written copy of it?
- A. No, sir.
- Q. In what form was it made, in handwriting or typewritten? A. Handwriting.
 - Q. Did you furnish a copy to your owners?
- A. No, sir; I furnished one report to the owners and one report to the Inspectors.
 - Q. Did you furnish a copy to the owners?
 - A. Not a copy, but a statement.
- Q. It was the same—they were the same to both parties?
 - A. The same; the substance was the same.

Mr. CAMPBELL.—I would like to have that produced before the examination is continued.

- Q. What time of day was it when the collision took place?
 - A. Between 2:15 and 2:20; about 2:18.
 - Q. In the afternoon? A. P. M.
 - Q. Whereabout was it?

A. Between 30 and 40 miles northwest of Point Reyes.

Q. Where was-

Mr. CAMPBELL.—Can't we send down for that bridge log right away?

The WITNESS.—You might get it, they have the official log, but the mate's book—they have the official log at Hammond's office.

Mr. DENMAN.—He wants the bridge log.

Mr. CAMPBELL.—Q. Where is the schooner now, up the river? A. Yes, sir. [36]

- Q. What was the course of your vessel?
- A. Magnetic or true or compass?
- Q. Your standard compass?
- A. Northwest half west.
- Q. From where did you take that bearing?
- A. We altered the course at Point Reyes; Point Reyes was abeam.
 - Q. What is your deviation?
- A. The standard compass, magnetic and wheel-house compass one-quarter westerly.
- Q. Is there not a deviation on your standard compass? A. Not when it is magnetic.
 - Q. Not on that course, on that run? A. No, sir.
- Q. Have you any deviation on your standard compass up and down the coast?
 - A. On our easterly course only.
 - Q. On your easterly courses? A. Yes, sir.
 - Q. How far off Point Reyes did you pass?
 - A. I was not on deck when we passed Point Reyes.
 - Q. Do you know what the log-book shows on that?

- A. Two miles about.
- Q. Is your ship equipped with a polaris?
- A. Yes, sir, an improved polaris.
- Q. Do you know how the distance off Point Reyes was ascertained?
- A. By soundings, I believe; I was not present, though.
 - Q. Do you ascertain it by a four-point bearing?
 - A. In clear weather.
- Q. Was it clear weather when you passed Point Reyes? A. No, sir.
 - Q. What was it? A. Passing fogs.
 - Q. Where were you at that time?
 - A. In my bunk asleep.
- Q. So the distance off Point Reyes was purely estimated from soundings? A. Yes, sir.
- Q. About what time was it you passed Point Reyes?
- A. I do [37] not know; I cannot recollect it to memory now; the log-book will show.
- Q. Where would be the next change of your course? A. Point Arena.
- Q. How far below Point Arena were you at the time of the collision? A. 25 miles, I should judge.
- Q. Who was the man that rushed on the bridge in his shirt sleeves before the collision? A. No one.
- Q. Who was the man on the bridge in shirt sleeves? A. Me.
- Q. Didn't you come from the lower deck to the bridge in your shirt sleeves?

 A. At 12:30?
 - Q. Just before the collision.

- A. At 12:30; after two o'clock the collision occurred.
 - Q. Didn't you do it just before the collision?
 - A. No, sir.
- Q. Had you been on the bridge all the time up to the collision? A. Yes, sir.
- Q. Was it usual for you to stand your watch in shirt sleeves then?
- A. Yes, sir; when you have an accident and have your coat burned up, it is. It was burned up.
- Q. What do you mean by having your coat burned up?
- A. In the steamer I was in previous to the "Necanicum" I put my coat on the fiddley to dry, and the fireman got a roaring fire started and my working coat went up in smoke.
- Q. How long have you been on the "Necanicum" this time? A. Since July 5th.
 - Q. And you had no working coat on her?
 - A. No, sir; I have not yet.
- Q. And you stood all your watches in shirt sleeves?
- A. Sweater, oil skins, and coat once in a while, service coat, go-ashore coat. [38]
- Q. That was the reason you were standing watch this day in shirt sleeves because you lost your coat?
- A. I am not in the habit of wearing a coat in working hours.
 - Q. Did you lose your cap in the fire also?
 - A. No, sir.
 - Q. Did you have it on this day?

- A. Yes, sir, I had a cap on.
- Q. Are you sure you were not bare-headed?
- A. No, sir; I was not bare-headed.
- Q. Where was the master at the time of the collision? A. On the bridge.
- Q. How long had he been on the bridge before the collision?
- A. At the time the passing signals were blown,—he was either on the bridge or approaching the bridge as the passing signals were given.
 - Q. Did you send for him?
- A. I had no time; he had only left there a very few minutes before sighting the vessel; he had been up there nearly all the time from the time I went on the bridge.
 - Q. Why was he there nearly all the time?
- A. I guess that is his business; he believed that was his place.
- Q. Is that true of steam schooners that the master is on the bridge nearly all the time?
 - A. In foggy weather, yes, sir; bad weather.
- Q. That was the reason he was on the bridge, was it? A. Yes, sir.
- Q. You first sighted the "Beaver" on your starboard bow?
- A. At all times the "Beaver" was on our starboard bow until after the collision.
 - Q. I say you first saw her on your starboard bow?
 - A. Yes, sir.
- Q. And you judged her to be seven or eight miles away? [39] A. Yes, sir.

- Q. Could there be any mistake as to whether or not it was the "Beaver"?
 - A. Right after the collision I read her name.
- Q. So you are sure it was the "Beaver" that you saw seven or eight miles away?
 - A. Yes, sir, by bearings and observation.
- Q. How far would it have passed you to your starboard if neither vessel had altered its course?
- A. She should have passed in the vicinity of a mile off.
 - Q. A mile off to your starboard? A. Yes, sir.
- Q. How did she appear when you first sighted her?
 - A. Twelve to fifteen degrees on our starboard bow.
 - Q. Seven or eight miles away? A. Yes, sir.
 - Q. What time was that you first sighted her?
 - A. Shortly before two o'clock.
 - Q. And the collision took place what time?
 - A. Between 2:15 and 2:20.
- Q. And you say you never at any time heard any fog signals from the "Beaver"? A. No, sir.
 - Q. Why didn't you?
 - A. I don't think they were sounded.
 - Q. Whereabouts is your bridge on your steamer?
 - A. It is a little abaft of the amidships.
 - Q. In the stern? A. Yes, sir.
 - Q. The machinery is in her stern? A. Yes, sir.
 - Q. Is she fitted for carying passengers?
 - A. No, sir.
 - Q. Small cabin? A. Yes, sir.
 - Q. Why is the bridge hot?

A. The engine-room was directly beneath that house; engine-room, fire-room, galley.

- Q. Boiler on deck? A. Boiler below decks.
- Q. Below decks? A. Yes, sir. [40]
- Q. How far is your smokestack abaft your bridge?
- A. Four or five feet.
- Q. That is what makes the bridge so warm?
- A. That is the closest part of the smokestack.
- Q. That is what makes the bridge so warm?
- A. That and the engine-room and the fire-room beneath; it is like that in all steam schooners of that type.
- Q. What is there around the smokestack where it comes through the roof of the cabin?
 - A. An umbrella.
 - Q. What is it? A. Iron casing.
 - Q. What do you call that? A. Umbrella.
- Q. What is there around the cabin itself; how is the roof of the cabin—
 - A. (Intg.) The cabin is a wooden structure.
 - Q. Is it fitted with grating around it?
 - A. Inside below the bridge deck.
 - Q. Below the bridge deck? A. Yes, sir.
 - Q. Can you hear the oil burners from the bridge?
- A. Well, the same as on all vessels of the type of that vessel.
 - Q. You can hear them, can't you? A. Slightly.
 - Q. More than slightly, can't you?
 - A. Like all vessels of that type.
 - Q. Like all steam schooners?
 - A. Schooners all of that type.

- Q. Is your ship any different than any other type?
- A. There are half a dozen different types of steam schooners; some of them have the machinery away aft, and the bridge away forward; others have the machinery amidships and the bridge aft or forward; some of them have it forward.
- Q. What steam schooner on the coast has her machinery amidships [41] and her bridge away aft? A. Not away aft.
 - Q. Give me the name of one of them now?
- A. The "Cricket" has her bridge abaft of the machinery, I think; I think the "Rochello."
- Q. The "Cricket" has her boiler in the extreme end of her?
 - A. The bridge is in the extreme end aft.
 - Q. The boiler is in the extreme end?
 - A. I do not know; I said the machinery.
 - Q. You answer my question. A. I don't know.
- Q. You do not know that her smokestack comes up very close to her stern? A. Yes, sir.
- Q. And you know it is also true with the "Rochello"? A. Yes, sir.
- Q. You know her boilers are on deck and turned around?
- A. I do not know that. Is not her machinery on the fore part?
 - Q. Forward of her boilers? A. Yes, sir.
 - Q. And the bridge forward of her machinery?
 - A. I do not think so.
 - Q. Have you ever been aboard of her?
 - A. No, sir.

- Q. They are unique types of vessels, are they not?
- A. The "Rochello" and the "Cricket"?
- Q. Yes. A. Yes, sir.
- Q. Now, standing on your bridge you are directly over the boilers, are you not?
- A. Almost; there is an intervening space between those several decks.
- Q. Where is the smokestack on your vessel, does it come up in the forward end or after end?
- A. I believe it comes up in the after end, I am not sure.
- Q. If your bridge is within four or five feet of the smokestack your bridge is over your boilers.
 - A. Probably. [42]
 - Q. Is it not true?
 - A. I cannot tell; I have not looked into it.
- Q. Now, when those burners are going there is considerable roar from them? A. Some.
 - Q. Not some; is there not considerable roar?
 - A. On some vessels, yes.
 - Q. Is there not on the "Necanicum"?
 - A. Not noticeably more than others.
- Q. Is it not the same on that steam schooner as on other steam schooners in that respect?
 - A. Not as much as on some others.
 - Q. Why not?
 - A. There are various kinds of burners.
- Q. Is it not true when you are standing on the bridge there is a roar that comes from those burners?
- A. There is more or less in all vessels; also on the "Beaver" there is a roar.

- Q. And to hear well from your bridge you have got to go to the railing of the bridge?
 - A. We adopt that precaution.
 - Q. Is not that the reason you do it?
 - A. Yes, sir.
 - Q. To get away from the roar of the burners?
- A. Yes, sir; not only the burners but the machinery.
- Q. It is difficult to hear from the bridge when the burners are going, is it not?
- A. Well, it is on all vessels more or less, a little difficult to hear.
 - Q. That is, on these steam schooners particularly?
 - A. On all vessels.
 - Q. On steam schooners particularly?
- A. No, sir, not steam schooners particularly; all vessels that have oil burners.
- Q. The nearer your bridge is to the smokestack the louder the roar, is it not?
 - A. It depends on the equipment.
 - Q. Is not that true on those steam schooners?
 - A. Some of them. [43]
 - Q. Is it not true on the "Necanicum"?
- A. Yes, sir; in the vicinity of the—if you poke your head down underneath the umbrella you can hear the roar.
- Q. Standing on your bridge, don't you hear the roar from your burners?
- A. There is very little difference between them and the "Beaver."
 - Q. Have you ever been on the "Beaver"?

- A. I walked aboard her and off.
- Q. Did you hear any roar? A. Yes, sir.
- Q. On the bridge? A. No, sir.
- Q. Where? A. On the forward deck.
- Q. Here in port? A. Yes, sir.
- Q. Lying still? A. Yes, sir.
- Q. And you heard the roar of her main boilers going?
- A. Not the main boilers, the donkey boilers. I did not say main boilers.
- Q. Any way, on the "Necanicum" you have got to go to the wings of your bridge to hear?
 - A. Not necessarily.
- Q. To get away from the roar of the burners you have got to go to the wings of the bridge, have you not?
- A. Not necessarily; a vessel with a loud whistle can be heard at reasonable distance any place on deck.
- Q. Don't you go to the wings to get away from the oil burners?

 A. We do that as a precaution.
- Q. Don't you do it for that purpose on the "Necanicum"?
- A. Not altogether, but to get out in the clear away from the masts, winches and other implements.
- Q. Is it not a fact, Mr. Beckwith, that those oil burners on the "Necanicum" make such a loud noise when they are going it makes it difficult to hear on the bridge of the "Necanicum"? [44]
- A. Not any more so than on other vessels of her type.
 - Q. I am not asking you about other vessels; I say

it is not a fact on that vessel? A. I can hear them.

- Q. Don't they interfere with your hearing of sounds? A. To a small extent.
- Q. You say you never heard a fog whistle from the "Beaver"? A. No, sir.
 - Q. Your lookout did not report you one?
- A. The lookout, when he went forward, said he could not hear anything, but seen her.
- Q. And you sent a lookout to the forecastle-head when you saw the "Beaver"?
- A. When the fog threatened to set in I sent the lookout.
 - Q. To the forecastle-head? A. Yes, sir.
- Q. What does the law require in regard to maintaining a lookout?
- A. A' lookout from sunset until sunrise, also in thick and foggy weather at all times in the forward part of the ship.
 - Q. Is that all?
- A. At the forward part of the ship; when he hears signals of passing ships to report them.
- Q. Don't the law require you to maintain a lookout forward at all times? A. No, sir.
 - Q. It does not?
- A. Only between sunset and sunrise and in foggy and thick weather.
- Q. You were the one who sent the lookout to the forecastle-head? A. Yes, sir.
 - Q. And you did that after you came on watch?
 - A. Yes, sir.
 - Q. There was no lookout on the forecastle-head

(Deposition of Walter N. Beckwith.) when you passed Point Reves?

- A. I don't know; I was not on watch; I was in my berth. [45]
- Q. Did you send him on when you took your watch or when you saw the "Beaver"?
 - A. At all times during the time.
 - Q. At various times during the time?
 - A. At all times.
- Q. You pulled him off and put him back and pulled him off and put him back again as the fog came in and went?
- A. At first when I came on the bridge it was extremely clear, I could see 10, 12 or 15 miles.
 - Q. You had no lookout?
 - A. No, sir; not when I could see 15 miles.
- Q. Then you put the lookout on when the fog came in? A. When I saw evidences of fog.
 - Q. Then you pulled him off again? A. No, sir.
- Q. Was he on there at all times after you first put him on? A. Yes, sir.
 - Q. Didn't the fog come and go?
 - A. It was threatening.
 - Q. Threatening? A. Yes, sir.
 - Q. Had it not been threatening at Point Reyes?
- A. I don't know; I was not on the bridge at Point Reyes.
 - Q. There was no lookout on when you came on?
 - A. It was clear weather.
- Q. What was this lookout doing when he was not on the lookout?

- A. This man who was on the lookout was at the wheel from 12 to 2.
 - Q. And you sent him from the wheel to the lookout?
 - A. Shortly after he left the wheel.
 - Q. That was after two o'clock? A. Yes, sir.
 - Q. And you went on watch at 12 o'clock?
 - A. 12:30.
- Q. Who was on the lookout from 12:30 to 2 o'clock? A. The other man.
 - Q. Who was there? A. I don't remember. [46]
 - Q. Why?
- A. I don't know for sure; there was passing fog; I think a man was there.
 - Q. Do you remember anything about it?
- A. I cannot say; but we could see shortly before two o'clock, we could see 15 miles and sighted the other steamer.
- Q. You are uncertain whether you had a lookout up to two o'clock? A. I had at times.
 - Q. At times?
- A. Yes, sir; but I did not have him constantly there during clear weather.
- Q. As the fog came, you put him on, and as the fog went away you pulled him off?
 - A. Before the fog came.
 - Q. As you saw it come? A. What was that?
 - Q. As you saw it coming up?
 - A. A long ways off.
 - Q. After it passed you pulled him off?
 - A. After it passed the "Beaver" came along.
 - Q. Between 12:30 and 2 o'clock you say you do not

know whether you had a man on the lookout in one breath and in the next breath you say you put him on again when it got foggy?

A. Yes, sir.

- Q. Was this the same man you put on at 2 o'clock or some other man? A. No, sir.
 - Q. Don't you know? A. Not his name.
- Q. Why can't you remember it as well as Emanulsen?

 A. I had no occasion to.
- Q. What makes you remember putting on Emanulsen at 2 o'clock?
- A. He left the wheel at five minutes after two, and I sent him on the lookout.
- Q. What became of the man on the forecastle-head from 12 to 2? A. What was that question?
- Q. Who took the lookout after Emanulsen left it?

 [47] A. Christenson.
 - Q. Where had he been?
 - A. Various places around deck.
 - Q. From 12 to 2? A. Yes, sir.
- Q. What became of the man on the lookout from 12 to 2; what became of him after 2 o'clock?
 - A. He had various duties around the deck.
 - Q. Who was it? A. I don't know.
- Q. How do you know he was doing various duties around deck?
- A. I usually keep them all busy when it is my watch on deck.
 - Q. Yet you don't know who it was?
 - A. There are eight sailors there.
 - Q. You don't know who it was?
 - A. No, sir; I cannot recall it to memory; there is

(Deposition of Walter N. Beckwith.) nothing to cause me to remember it.

- Q. Do you remember sending any man to the lookout at 12 o'clock? A. I don't remember.
- Q. Do you remember sending any man to the lookout between 12 and 2?
- A. I believe there was a man sent there; I cannot say for sure. During the foggy weather there was a man there.
- Q. Why do you say you cannot remember. Is it customary for you to do that, or that you remember it?
- A. Always in foggy weather I do that at all times, during the fog or threatening fog there is always a man on the lookout.
 - Q. Because the law requires it you do it?
 - A. For my own safety and the sailors as well.
- Q. You had a man on the lookout sometimes between 12 and 2 o'clock because the law required it?
 - A. On account of the law?
 - Q. Because the law required you?
 - A. No, sir; to report other vessels approaching.
- Q. Do you recall whether that man was on there constantly? [48] A. No, sir.
- Q. As a matter of fact, you cannot recall anything about it?
- A. I cannot recall who it was by name; he was there.
- Q. You cannot ever recall there was fog between 12 and 2? A. Yes, sir; there was fog.
 - Q. Can you recall having sent a man there?
 - A. I cannot state who it was; I know there was fog

(Deposition of Walter N. Beckwith.) and there must have been a man there. There was a man there; who he was I don't know.

- Q. After you saw the "Beaver" seven or eight miles away, about 15 degrees on your starboard bow, so that she would pass you a mile off, as I understand you to say?

 A. Yes, sir.
 - Q. How long did you see her?
 - A. Several minutes.
 - Q. How many minutes? A. Three or four.
 - Q. Three or four minutes? A. Yes, sir.
- Q. How long was it that she was shut out by the fog?
- A. Oh, from shortly after 2 o'clock until the collision occurred—shortly before, about two or three minutes before the collision occurred.
 - Q. At that time where was she?
- A. She was coming down the coast; had she proceeded on her course she should have been about a mile or so inside.
- Q. Where was she at the time you saw her at 2:15, or three minutes before the collision?
 - A. On our starboard bow.
 - Q. Whereabouts was she on your starboard bow?
- A. I should judge between three and four points; about three.
 - Q. How many degrees, about?
 - A. There are 11 and a quarter degrees to a point.
- Q. That was two or three minutes before the collision? A. Yes, sir. [49]
 - Q. How far distant was she?
 - A. Oh, in the vicinity of three-quarters or a mile.

- Q. How far off your starboard bow would that make her? A. I can figure it out by—
 - Q. What is your judgment?
- A. Had she proceeded on her course she would have passed three-quarters of a mile.
 - Q. That is the time you first saw her?
 - A. No, sir.
- Q. At the time you saw her two and a half or three points before the collision, how far off was she?
 - A. Do you mean in miles or feet?

Mr. DENMAN.—The question is confusing to the witness.

Mr. CAMPBELL.—Q. How far off was she from you at the time you saw her two and a half or three minutes before the collision when she was three points on your starboard bow?

- A. Three-quarters to one mile.
- Q. Three-quarters to one mile? A. Yes, sir.
- Q. At that time you say her bearing had widened?
- A. Yes, sir.
- Q. How much? A. From 15 to 33 degrees.
- Q. How far ahead of you did judge her to be at that time? At the time—what what time?
- Q. Three minutes before the collision when you saw her three points?
 - A. She would be three-quarters of a mile.
 - Q. How far off to one side?
 - A. Between one-half and three-quarters of a mile.
- Q. At that time you blew, as I understand your testimony, two blasts? A. Yes, sir.
 - Q. She was in plain sight of you? A. Yes, sir.

- Q. Had she changed her course up to the time you blew two blasts? A. No, sir; not visible to me.
 - Q. From that time she was coming nearer?
 - A. Yes, sir. [50]
 - Q. And you were pacing the bridge all this time?
 - A. Yes, sir.
 - Q. Up to the time of the collision? A. Yes, sir.
- Q. Did you stay on there from the time you blew your two blasts up to the time of the collision?
 - A. No, sir.
 - Q. What did you do then?
- A. Called out the sailors from below; called the second mate and instructed him to take in the log and called the men out of the life-boats.
 - Q. Where were the life-boats?
- A. One on each side of the bridge at the extreme wings.
 - Q. Did you leave the bridge to do that?
 - A. When the captain came, yes.
 - Q. Did you leave the bridge to do that?
- A. You understand what the bridge is there, the whole deck is the bridge; I never left the upper deck.
 - Q. Have you not got a regulation bridge on her?
 - A. The way the bridge extends—
- Q. (Intg.) Is the floor of the bridge on a level with the cabin roof? A. The top of the house.
 - Q. Is the bridge enclosed? A. No, sir.
 - Q. Is the after part of it enclosed at all?
 - A. No, sir.
- Q. The floor of the bridge is simply an extention of of the roof of the house?

- A. Yes, sir; with planks to walk on.
- Q. Is the forward part of your bridge enclosed?
- A. To about there, with canvas. (Illustrating.)
- Q. How high? A. Here. (Indicating.)
- Q. Three and a half feet? A. Yes, sir.
- Q. With canvas? A. Yes, sir.
- Q. Have the wings of the bridge canvas?
- A. Yes, sir; that high. (Indicating.)
- Q. The same height? A. Yes, sir. [51]
- Q. Coming back the width of the bridge?
- A. Yes, sir.
- Q. And then the floor of the bridge is simply the top of the cabin extending back over the roof?
 - A. Yes, sir.
- Q. And the smokestack is within four or five feet of the floor of the bridge?
- A. It goes through the floor of the deck. The entire upper deck would be the bridge.
- Q. Pacing back and forth across the floor you are within four or five feet of the smokestack?
 - A. Yes, sir.
 - Q. How high is that umbrella above the roof?
 - A. Between 20 and 26 inches, I should judge.
 - Q. How large in diameter is the smokestack?
 - A. I should judge about four and a half or five feet.
- Q. How far does the umbrella extend up beyond it?
- A. A square umbrella at the sides, I guess about 18 inches.
 - Q. Who blew the two blasts? A. I did.
 - Q. And up to that time the "Beaver" had not

(Deposition of Walter N. Beckwith.) changed her course? A. No, sir.

- Q. How soon after you blew the two blasts did you leave the bridge and call the men out of the lifeboats?

 A. Half a minute or so.
- Q. You had then heard no response from the "Beaver"?
- A. I heard no response, but took it evidently that she sounded one whistle, because she altered her course sharply across the bow.
 - Q. Did you see that? A. Yes, sir.
 - Q. What did you do then?
 - A. Called the captain's attention to it.
 - Q. Where was he? A. On the bridge.
 - Q. Why did you have to call his attention to it?
- A. It was my duty; he already seen it, but it was my duty. [52]
 - Q. What did you say to him?
- A. I says, "What is he going to do; what the hell is he going to do?" I says?
 - Q. What did the captain do then?
- A. Placed his hand on the telegraph and says, "My God! What is that man going to do?"
 - Q. What did he do then?
- A. When we determined that the vessel was attempting to cross our bow he gave her full speed astern on the telegraph sounding three blasts of the whistle denoting the engines were going full speed astern.
- Q. At the time the "Beaver" altered her course to starboard, did you give the danger signal?
 - A. She altered her course to port.

- Q. She altered her course to starboard?
- A. That is port helm.
- Q. Is that altering it to starboard?
- A. The vessel goes to port.
- Q. That is altering her course to starboard under a port helm? A. Yes, sir.
 - Q. Did you give the danger whistle?
 - A. Three whistles denoting we were going astern.
- Q. At the time the "Beaver" was from one-half to three-quarters of a mile ahead of you?
 - A. Yes, sir.
- Q. How soon after you saw the "Beaver" change her course did you leave the bridge?
- A. I never left the bridge deck at any time until after the collision.
 - Q. You left what we call the bridge?
- A. In the vicinity of the bridge I walked around it; also went aft and called the second mate by stamping on the roof of his cabin.
- Q. At that time you could not see over the top of the bridge? A. Yes. sir.
 - Q. From where you were aft?
 - A. Yes, sir. [53]
 - 'Q. Why did you call the second mate at that time?
- A. In case of an accident I would not let him drown.
 - Q. You thought there was going to be a collision?
 - A. I surely did, the way the other ship acted.
 - Q. What was done with the helm of your vessel?
 - A. Starboarded.
 - Q. Starboarded? A. Yes, sir.

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(Deposition of Walter N. Beckwith.)

Q. And you swung off to port?

A. To port; yes, sir.

Mr. DENMAN.—At what time?

Mr. CAMPBELL.—Just a moment. I object to counsel interrupting the cross-examination at this point.

Mr. DENMAN.—What time of changing the helm are you referring to?

Mr. CAMPBELL.—I seriously object to counsel breaking in on the cross-examination; he knows it is not right.

Q. What time did you order your helm to starboard, when you blew your two blasts?

- A. When I blew the two blasts.
- Q. What was the order you gave?
- A. Starboard your helm.
- Q. Did the quartermaster do it? A. Yes, sir.
- Q. What kind of steering gear have you got?
- A. Rods, ropes and chain.
- Q. What kind of a steering apparatus have you?
- A. Wheel hand gear.
- Q. Hand gear? A. Yes, sir.
- Q. Did he alter his course?
- A. At what time? Yes, he altered his helm.
- Q. Did you alter the course of your vessel?

A. Must have altered it to some extent. The master was on the bridge at that time; I don't know what he did.

Q. Did you watch it?

A. No, sir; the captain was on the [54] bridge in command.

- Q. Who gave the order, did you? A. Yes, sir.
- Q. Why didn't you watch it?
- A. He put his helm to starboard; I had business other places.
- Q. If you had continued swinging to port there would have been no collision, would there?
- A. I don't know; the "Beaver" might have followed us right on up to Seattle.
- Q. Would you have gone to Seattle if you had continued to swing to port?
 - A. We would have gone in a circle.
 - Q. There would have been no collision?
- A. I do not know what the "Beaver" would have done.
 - Q. You did not continue to swing to port?
- A. I do not know what occurred to the wheel after I left that part of the bridge.
 - Q. Did you order him to steady his helm after?
 - A. No, sir.
- Q. Was the quartermaster situated so he could see the "Beaver"?
- A. He should have been; I do not know; he should have been.
- Q. When you ordered his helm to starboard, would he hold your vessel way off to port until you ordered him to steady it?
 - A. Yes, sir; I did not order him.
- Q. I say, it would continue to swing off to port until it was ordered steady? A. It would; yes.
- Q. If he continued to swing off to port there would have been no collision, in your judgment?

- A. I don't know what action the "Beaver" would have taken.
- Q. Wouldn't you have swung far enough away to avoid a collision?
 - A. Had the "Beaver" proceeded on her course.
- Q. If you had continued to swing to port wouldn't you continue swinging far enough to avoid a collision?
 - A. Not if the "Beaver" ran after us. [55]
- Q. If the "Beaver" continued swinging to starboard under a port helm would not the two vessels separate? A. I cannot answer that.
- Q. Your judgment is you did continue to swing to port under a starboard helm?
 - A. She had started to swing to port.
 - Q. When you left the bridge?
- A. I did not leave the bridge when I took up other duties.
- Q. You do not call the entire top of the cabin the bridge? A. That is the bridge deck.
- Q. You are a seafaring man enough to know whether you call the entire top of the cabin the bridge?
- A. The entire fore part. There are certain times a man has to do his duty on the bridge, he has to go away aft, forward, to the wings and amidship; all over.
- Q. Don't you know there is a certain part of your vessel called the bridge? A. Yes, sir.
 - Q. How wide is that bridge?
 - A. Almost the width of the ship.

- Q. How long fore and aft?
- A. About 40 feet.
- Q. Then your smokestack comes right up through the bridge? A. Part of the bridge; yes.
 - Q. And the hood is part of the bridge?
- A. The bridge deck. I don't know what the bridge is technically speaking on that ship. I know what it is as a sea-faring man, I do not know according to your version.
 - Q. You got the sailors out of the forecastle head?
- A. No, sir.
 - Q. Where were they?
 - A. They were in the forecastle.
 - Q. That is underneath the forecastle-head?
 - A. Yes, sir.
 - Q. Did you call them? A. Yes, sir.
 - Q. Did you go to call him?
 - A. No, sir: I hollered. [56]
 - Q. What did you yell?
- A. I told them to get the hell out of there, there was going to be trouble.
 - Q. Where were you at that time?
 - A. On the bridge deck.
 - Q. On the forward part of the bridge?
 - A. Yes, sir.
 - Q. Was that before you went to the aft part of it?
 - A. To call the second mate?
 - Q. Yes. A. I cannot say.
- Q. Did you get back to the forward part of the bridge before the collision? A. Yes, sir.

- Q. Was your vessel still swinging under a starboard helm?
 - A. She was going astern; I did not notice.
 - Q. Was not she swinging at all?
 - A. She must have been swinging; I could not say.
 - Q. What way was she swinging?
 - A. Astern.
- Q. What way will she swing when backing full speed with her helm starboarded?
- A. Stern way to port with a right-hand wheel, stern way to port; naturally the bow has to take the opposite direction.
- Q. Why did you say on your direct examination you could not tell?
- A. You asked a different question. I say when the vessel is making sternway.
- Q. Up to the time she is making sternway she will follow her helm? A. She should.
- Q. All the time you are reversing your boat would be paying off to port?
- A. The helm has nothing to do with the vessel backing, not that type of ship; the helm never changes in backing your vessel; not that type of ship.
- Q. What did you mean by saying on your direct examination when your engine is reversed full speed astern that the ship will follow the helm up to the time she gains stern way? [57]
- A. She will follow as long as you have headway; she follows the helm, but the minute she picks up sternway she turns first to port with a right-hand

wheel. I never made a study of how long it takes a wessel to pay off to port or starboard in backing; that is, before sternway is picked up.

- Q. Up to the time she picks up sternway and while she is still forging ahead and your propeller was reversed in your judgment she would follow the helm?
 - A. I do not know.
- Q. Why did you say on direct examination she follows her helm?

Mr. DENMAN.—I submit he did not say that.

Mr. CAMPBELL.—Q. Why did you say on your direct examination the ship follows her helm up to the time she gains sternway?

A. I did not say that and you can go back and read my testimony.

(The Reporter thereupon reads the testimony of the witness.)

- Q. What is your judgment, Mr. Beckwith, as to which way her head will swing if the helm is starboarded and you reverse your engines full speed, which way would her head swing while she is still going ahead? Won't she follow her helm?
 - A. I cannot answer that question.
 - Q. How long have you been on steam schooners?
 - A. 17 years.
 - Q. And yet you do not know?
- A. I cannot answer authentically; different vessels would act different.
- Q. Don't you know after 17 years what your vessel would do?
 - A. I have not been 17 years on the "Necanicum."

Q. Don't you know what a vessel would do after 17 years experience?

A. I know when a vessel picks up sternway with a right-handed propeller she goes the other way; with a vessel going ahead with the propeller and helm she answers [58] when you alter the helm and when you change your propeller backing I don't know how she would go.

- Q. You never have observed that on board steam schooners in 17 years experience?
 - A. I never had occasion to.
- Q. You never reversed before at full speed astern when proceeding at sea? A. A few times.
 - Q. Did you observe which way she swung?
 - A. When she picked up stern way?
 - Q. Before she picked up stern way?
 - A. I did not observe.
- Q. Then, if you continued ahead instead of reversing under your starboard helm you would have swung away from the "Beaver"?
 - A. The chances are I would not be here.
- Q. You would have swung away from the "Beaver"
- A. The chances are she would have caught us amidships and sunk us; cut us in two if we had not backed.
- Q. How long does it take to turn that vessel around in a circle?

A. I never turned her around in a circle; she will make eight knots an hour and the diameter of a circle should be possibly three-quarters of a mile.

- Q. How many points will she turn running full speed ahead in half a minute?
 - A. Under what conditions?
- Q. The conditions you had there that day with her helm to starboard? A. In half a minute?
 - Q. Yes.
- A. She should turn pretty nearly at right-angles; I cannot answer authentically.
- Q. You have answered it to the best of your judgment?
- A. Well, the conditions alter cases in steam schooners.
 - Q. Have you answered it to your best judgment?
 - A. I cannot tell.
- Q. What is your best judgment about it, how far she would [59] turn in half a minute under a starboard helm? A. From 1 to 8 points.
 - Q. Nearer 8 than 1 in your judgment?
 - A. I do not know.
- Q. You must have some idea if you have been 17 years on these vessels.
- A. Yes, sir; I have seen steam schooners turn almost instantly and others I have seen go in several minutes.
- Q. When will a vessel of that type turn quickest and easiest, when loaded or light?
 - A. Different conditions alter cases.
 - Q. What do you mean?
- A. How much load; what the elements are; upon the wind, sea, current and tides.
 - Q. When a vessel is loaded she would be nearly

(Deposition of Walter N. Beckwith.) on an even keel? A. No, sir.

- Q. Two feet by the stern? A. Yes, sir.
- Q. And this time she was four foot draft forward and 16 foot draft aft? A. In that vicinity.
- Q. She would turn quickest under the conditions of weather, sea, current and tides that you had at this time prior to the collision?
 - A. Very little difference.
- Q. Which way would she turn quickest, when loaded or light?
 - A. Very little difference; I do not know of any.
- Q. Is it not a fact that vessels with their machinery aft and light forward will turn on their heels quicker light than loaded?

 A. In some cases.
- Q. Is not that generally true on that type of vessel? A. No, sir.
 - Q. Is it not true with the "Necanicum"?
 - A. Weather conditions make changes.
- Q. Taking the weather conditions as they were on that day, is it not true that that type of vessel with their machinery aft turn quicker light than loaded?
 - A. There is very little [60] if loaded properly.
- Q. Now, you know from your own experience that they will turn quicker?
- A. Take it if you know it. I do not know it. I do not know that, if you know that, all right.
- Q. You say you could see the steam, but you could not hear the whistle? A. No, sir.
- Q. What was the steam you saw, from her whistle? A. Apparently from her whistle.

- Q. Was her whistle in plain view?
- A. The smokestack was visible and the whistle must have been there.
 - Q. The steam you saw coming from the whistle?
 - A. Yes, sir.
 - Q. How many blasts of steam did you see?
- A. Several; I surmise he intended to blow one whistle by the fact he was altering his course across our bow. The sailors and lookout man knew that; they are the ones who would know, if they could hear.
- Q. Why would they know any better than you would?
 - A. They were nearly 100 feet closer to her.
- Q. You think 100 feet would make a difference in hearing and not hearing on that vessel?
 - A. Decidedly on any vessel.
- Q. Under the conditions of wind, weather and sea that day you think men on the deck could hear that whistle when you could not hear it on the bridge?
- A. They would hear it ahead of me; it is over 100 feet to the forecastle and a man would hear it better than I.
- Q. Would he hear it when you could not hear it at all?
 - A. He could hear 100 feet sooner than I would.
 - Q. You say you did not hear it at all?
 - A. No, sir.
 - Q. You say the sailors, the lookout could hear it?
 - A. I said possibly. [61]
 - Q. Did you ask them how many blasts sounded?

- A. One of them hollered aft one whistle.
- Q. Did you ask them how many blasts sounded?
- A. No, sir, they volunteered the information.
- Q. Who was it?
- A. One man on deck, either the lookout man or one man on deck.
- Q. How high is the forecastle head above the deck? A. 7 or 8 feet.
 - Q. How much sheer to your vessel?
 - A. The water-line—
 - Q. (Intg.) On your main deck how much sheer?
 - A. From what points?
 - Q. What is the sheer of your main deck?
 - A. I don't know.
 - Q. Any sheer at all? A. Yes, sir.
 - Q. How much in your judgment?
- A. Raise of about four or five feet, I should judge; more than that, possibly six feet.
- Q. How far from the water was your main deck aft? A. Aft?
 - Q. Yes, drawing 16 feet?
 - A. A couple of feet, three feet may be.
 - Q. How far forward?
 - A. Three and six are nine.
- Q. Then the bow of your vessel was much higher out of the water than the stern?
 - A. Considerably higher.
- Q. Above the main deck seven or eight feet of the forecastle-head? A. Yes, sir.
 - Q. How much sheer is it to the forecastle deck?
 - A. The forecastle deck is built in proportion to

(Deposition of Walter N. Beckwith.) the deck and has the same sheer.

- Q. How much sheer between that deck and the stem?
- A. I cannot figure it out; I can figure it out with a pencil and piece of paper; I suppose it would be about a foot or a foot and a half. The forecastle deck is probably about 20-odd feet [62] long.
- Q. So that stem on the forecastle deck would be 9 or 10 feet? A. The stem?
 - Q. The forward part of your forecastle deck?
 - A. Yes, sir, I should judge so.
- Q. How could a man standing on the main deck see the "Beaver" ahead?
- A. I did not see the "Beaver" ahead; I did not know any one saw the "Beaver" ahead.
 - Q. You say she was three points off?
 - A. That is, on the bow.
 - Q. How much is three points?
 - A. 33 degrees.
- Q. At an angle of 33 degrees over your forecastlehead, how much higher would the side of your ship be at that place than at your main deck?
 - A. I do not understand the question.
- Q. At what point on your forecastle-deck would a three-point bearing be?
- A. All points are the same from stem to stern. A three-point bearing is an angle of 33 degrees.
 - Q. Was the "Beaver" abeam of you?
 - A. No, sir.
- Q. She was three-quarters of a mile ahead?
 - A. Yes, sir.

- Q. And three-quarters of a mile off to one side?
- A. Practically about that.
- Q. Then she was about 33 and a third degrees off the bluff of your bow on your forecastle-head abaft your stem? A. Abaft the stem?

Q. Yes.

- A. No, sir, she was forward of the stem. She could not possibly be bearing 33 degrees and be abaft of the stem, impossible.
 - Q. Assume this drawing is the "Necanicum"?
 - A. Yes, sir.
- Q. What would be an angle of 33 and a third degrees; where would you have the "Beaver"?
 - A. Something like that. (Indicating.) [63]
 - Q. Off the line I am drawing here?
- A. Yes, sir. That is hardly enough; it would be a little more this way. (Indicating.)
- Q. You draw the line where you think it would be. A. Yes, sir.
 - Q. Off like that? A. Yes, sir.
- Q. This would be the position of the "Beaver" then? A. No, sir; decidedly not.
- Q. What I mark is the "Beaver" as you have drawn it? A. Yes.
 - Q. This is the "Necanicum"? A. Yes, sir.
- Q. And you saw the "Beaver" in about the angle A-B. Is that true? A. That is it.
- Q. What I want to know is, you say that your forecastle-head is seven or eight feet above the main deck? A. Yes, sir.
 - Q. You are speaking of the break of the forecastle

on that part? A. Yes, sir.

- Q. That is the line C-B? A. Yes, sir.
- Q. How much higher would the point "A" be than the break of the forecastle?

Mr. DENMAN.—What is "A," the deck or rail?

Mr. CAMPBELL.—Q. Take it on the rail. Is there a solid bulwarks around there?

- A. A rail about 16 inches.
- Q. Take it from the top of the rail then.
- A. That would be 16 inches higher than the forecastle-head.
- Q. How much higher would that point be than that part of the forecastle-head?
 - A. That point there?
 - Q. Yes.
- A. A couple of feet, I guess. I don't know; I cannot answer that authentically.
- Q. So that the point to see the "Beaver" from the point "A"—
- A. (Intg.) You don't need to be at point "A" to see the "Beaver."
- Q. Where was the man on deck that called out that she blew one [64] whistle?
 - A. I don't remember.
 - Q. Down on the main deck, was he?
 - A. I don't remember.
 - Q. You do not remember?
- A. No, sir; I remember what the men said in the life-boat.
 - Q. Up in the life-boat? A. Yes, sir.
 - Q. What did they say?

A. No sound; they says, "Nothing but water coming out of his whistle."

Q. I am talking about the man now who reported one whistle to you.

A. I did not say; I surmised that she blew one whistle. Someone stated that there was one whistle blown, I believe.

Mr. CAMPBELL.—I offer this drawing in evidence that the witness just made.

(The drawing is marked "Libelant's Exhibit 1.")

- Q. No one reported one whistle blown?
- A. Somebody stated in passing.
- Q. When, afterwards?
- A. In the general line of conversation.
- Q. When? A. Before the collision occurred.
- Q. In the general line of conversation some one said she had blown one whistle?
 - A. Someone said she blew one whistle.
 - Q. Where were you at the time?
- A. On the bridge deck.
 - Q. The after part of it?
 - A. In the vicinity of the bridge.
 - Q. Who were you holding a conversation with?
- A. General conversation getting the men out of the way and the second mate up.
- Q. You do not recall whether it was somebody on the main deck or not that said that?
- A. No, sir: I cannot recall it; someone stated one whistle was blown.
- Q. Why didn't you blow the danger whistle when you saw steam coming?

- A. That would necessitate a loss of time.
- Q. What loss of time?
- A. Because immediately when the other [65] vessel was crossing our bow, placing us in jeopardy, we immediately backed to get out of danger; we also let him know what we were doing by blowing three whistles; it was his place to blow the four whistles.
- Q. Why, because he saw you were doing the wrong thing?
 - A. We did not do the wrong thing.
 - Q. What is then?
- A. Any time he did not want to pass, so we indicated by our whistle, he could have blown four whistles, stopped, gone astern and navigated with caution until the proper signals were given and understood.
- Q. Are you not required in danger to blow four whistles?
- A. You are required to back astern, use your own judgment, get out of the way.
 - Q. You thought there was going to be a collision?
 - A. Yes, sir.
 - Q. You thought it at that time? A. Yes, sir.
 - Q. Did you renew your two blasts?
 - A. No, sir, we backed.
 - Q. You did not blow the danger whistle?
 - A. No, sir.

Mr. DENMAN.—I submit he testified he blew three whistles which is also the danger signal under those circumstances.

A. I did not do that; the captain did that.

Mr. CAMPBELL.—Q. You were not there at the time it was done?

- A. I was on the bridge.
- Q. You had gone aft to call the men?
- A. Just at that time?
- Q. Yes.
- A. I never left the bridge deck until after the collision occurred.
- Q. When you say you never left the bridge deck you mean you never left the cabin roof?
 - A. Yes, sir, in the vicinity of the bridge.
- Q. Had you gone to the aft end of the cabin roof to call the [66] second officer?
 - A. That is where I was.
 - Q. How far is that from the bridge, 40 feet?
- A. 15 feet. The captain was on the bridge at the time, had command of the ship.
 - Q. What time was that?
 - A. What? When the collision occurred?
 - Q. The time you blew your two blasts?
 - A. Shortly before the collision occurred.
 - Q. At what time?
 - A. I should judge two and a half or three minutes.
 - Q. Before the collision? A. Yes, sir.
 - Q. What time did the collision take place?
 - A. Between 2:15 and 2:20; I should judge 2:18.
 - Q. Did you take the time? A. Nearly.
 - Q. Did you look at the time?
 - A. When I logged I looked at the time.
 - Q. What do you mean by that?
 - A. Change of course, turn the ship around; after

(Deposition of Walter N. Beckwith.) the collision I looked at the time.

- Q. You understand my question?
- A. Yes, sir, I answered it.
- Q. What time did you blow your two whistles. You say two and a half or three minutes before the collision. I say, what time did the collision take place?
 - A. Between 2:15 and 2:20; I should judge 2:18.
 - Q. Did you take the time at that time?
 - A. I must have or I would not have known it.
 - Q. What did you take it from? A. Watch.
 - Q. Have you a clock on your bridge?
 - A. No, sir.
 - Q. Did you note the time down? A. Yes, sir.
 - Q. Where? A. In the log-book.
 - Q. At the time that you actually took it?
 - A. I was [67] engaged then.
 - Q. You wrote up the log after?
 - A. Yes, sir; after the collision occurred.
 - Q. Did you put back to San Francisco?
- A. Yes, sir. I could not write it during the collision.
- Q. When you say that the "Beaver" was going six or eight knots, she must have been at reduced speed then?
- A. When did I state she was going six or eight knots?
 - Q. During your direct examination.
- Mr. DENMAN.—Q. You mean six or eight knots at the time of the collision.
 - Mr. CAMPBELL.—Q. I mean what he said.

- Q. What did you mean on your direct examination when you said the "Beaver" was going six or eight knots? A. When she struck us.
 - Q. She had been backing?
 - A. Evidently she had been backing.
 - Q. Had she given you any signal she was backing?
 - A. I could not discern then; I could not say.
 - Q. Did you watch the steam to see it?
 - A. I watched the steam; no sound emitted.
 - Q. No sound emitted?
 - A. Various whistles were heard afterwards.
- Q. Do you think the "Beaver" could see you at the time you blew your passing whistle?
 - A. Yes, sir.
 - Q. Had you been blowing fog signals?
 - A. Yes, sir.
 - Q. How often?
- A. Intervals of not more than a minute and long blasts according to law.
 - Q. What does the law require of fog-whistles?
- A. Long blasts at intervals of about one minute, not more.
 - Q. Is that what the law requires?
- A. Yes, sir; that is the [68] coast law. The international is intervals of two minutes; on this coast it is one minute.
 - Q. What rules apply out there where you were?
- A. That would be the international laws of navigation.
 - Q. Two minutes?

- A. No, sir, on this coast they require one-minute intervals.
 - Q. Who require it?
- A. The Inspectors; the United States Steamboat Inspectors.
- Q. Have you seen the rules requiring that on this coast?
- A. I have passed several examinations and found it out, and it has always been so.
- Mr. DENMAN.—Q. As a matter of fact, the automatic signals on the steamers are fixed?
- A. They are fixed as a rule where automatic whistles are set at 8, or 6, or 9 second blasts every one minute of 58 seconds, or I have them set; they are like a clock.
- Mr. CAMPBELL.—Q. What was there in your judgment that would cause the "Beaver" to alter her course and attempt to pass you port to port when you could have passed three miles apart starboard to starboard?
- A. Poor judgment on the bridge of the other vessel.
 - Q. Any physical reason that would be required?
 - A. No, sir; not to my judgment.
- Q. Nobody but a crazy man would have attempted to do it?
- A. A man who loses his head by inexperience would do it.
 - Q. What kind of wind and weather was there?
 - A. Light southerly airs.
 - Q. No sea? A. Moderate sea.

- Q. What kind of sea? A. Moderate sea.
- Q. Which way was it running?
- A. Moderate sea, no swell, [69] moderate; very little; just white bubbles.
 - Q. Practically no sea at all?
 - A. Practically none; moderate.
- Q. Why did you enter in your log you blew two blasts of whistle which he answered with one, when you did not hear him answer with one?
 - A. I took someone's statement for it.
- Q. How long had your vessel gained sternway before they actually came together?
- A. Authentically I could not state, but I judge she gained sternway three-quarters to one mile.
- Q. How fast was she going sternway at the time of the collision, astern?
 - A. Three or four miles probably.
 - Q. Astern? A. Yes, sir.
- Q. She was going nearly as fast astern as the "Beaver" was going ahead?
- A. Not anywhere, not near as fast; she could not go as fast astern as the "Beaver" was going ahead.
 - Q. Where had you come from this trip?
 - A. You mean our port of departure?
 - Q. Yes. A. San Pedro.
 - Q. Did you come into San Francisco at all?
 - A. No, sir.
- Q. I don't see any notation in your log of your having reduced your speed from one o'clock in the morning. Don't you note your reductions of speed?
 - A. Yes, sir.

- Q. Were you running at full speed all that time?
- A. My watch was. I am not responsible for the second mate's log.
- Q. You were running full speed from the time you went on the bridge at 12 o'clock up to the time of the collision?
- A. What we go by full speed is the telegraph was on full; in foggy weather it is customary for the engineer to reduce slightly during the time fog signals are going; that is to avoid when you stop the popping off of steam.
- Q. Don't you note in your log any changes of speed you give [70] to the engine-room?
- A. Not in all cases; if we change the speed on the telegraph, if we direct it, we note it.
 - Q. You gave no direction of reduced speed at all?
- A. I gave none; whether the captain or second mate did, I don't know.
 - Q. I am speaking about yourself. A. I did not.
- Q. You were running along your course at regular full speed with your telegraph set at full speed?
- A. There was a slight reduction in the engine-room.
- Q. You do not know anything that happened in the engine-room at all, do you?
 - A. I have a very good idea it was reduced.
 - Q. Who told them to reduce the speed?
 - A. It is their duty.
 - Q. Did you you ever tell them to reduce the speed?
- A. I never had occasion to, they had that much sense to do it.

Q. Will you say you never told them to reduce the speed? A. No, sir.

Q. Let me see the statement you delivered to the Inspectors, and I will finish the cross-examination.

(Mr. Denman hands counsel paper.)

Mr. CAMPBELL.—You have had this all the time while I was under the impression it was in the office of the company.

Mr. DENMAN.—What are you talking about?

Mr. CAMPBELL.—I demanded a while ago the production of a copy of the statement furnished the inspectors and asked you to send to the office for it and you pull it now out of your own folder, and you knew it all the time.

Mr. DENMAN.—If you look at the record, what you asked for was a copy of the statement made to the company and not to the United States Inspectors at all.

Mr. CAMPBELL.—The record very clearly shows I asked the [71] witness to produce a copy of the statement given to the inspectors, and he said a copy was left with the owners.

The WITNESS.—That looks like the report. I cannot state it is word for word.

Mr. DENMAN.—Q. The fact is the two are not identical? A. Not identical.

Mr. CAMPBELL.—I will ask further for the copy of the owners.

Mr. DENMAN.—That is what you asked for before.

Mr. CAMPBELL.—You understood exactly what I asked for.

- Q. What is it customary for the lookout to do in the fog?
- A. To note the approach of vessels if sighted and immediately report all whistles heard.
- Q. How often does your lookout report to the bridge he cannot hear any whistles?
- A. When he does not hear anything he remains there.
- Q. Why did you put in your report: "The lookout reported twice he could hear no fog-whistles?"
 - A. I expected to hear them.
 - Q. Did he report he could not hear them?
 - A. Yes, sir.
- Q. Did you ask him if he could hear the fog-whistles?
- A. I did. I was sounding mine at regular intervals.
- Q. How soon did you start to alter your course to starboard after you sounded your two blasts?
 - A. About the same time I gave the order.
 - Q. I mean starboard your helm?
- A. I ordered it about the same time. I did not alter the course to starboard, however.
 - Q. What was the damage done to your vessel?
- A. The stem was damaged, hawser-pipe crushed and anchor driven into the ship's side, rudder-post cracked, tiller bent.
 - Q. Do you know the size of your tiller?
 - A. About three [72] inches square.

- Q. Three and a quarter by three and a quarter, is it not?
 - A. About that; I could not state for sure.
 - Q. Which hawser-pipe was it?
 - A. The port hawser-pipe.
 - Q. And the port anchor was the one damaged?
 - A. Yes, sir.

Mr. CAMPBELL.—That is all.

Redirect Examination.

Mr. DENMAN.—Q. Mr. Beckwith, what speed were you making at the time you sighted the "Beaver"? A. I should judge about eight knots.

- Q. Do you know the "Beaver" by sight?
- A. Yes, sir.
- Q. Were you able to recognize her the first time you saw her?
- A. I did not know, but I thought it was either the "Bear" or "Beaver"; the "Beaver" and the "Bear" are identical, you know; very much alike.
- Q. You say that you hailed the men; what actually happened, did you call out to them to come out?
 - A. The captain hailed him. Our captain—
- Q. You say you hailed the men forward in the forecastle-head? A. Yes, sir.
 - Q. You have a very good voice?
 - A. Fair to middling.
 - Q. You turned your voice loose? A. Yes, sir.
 - Q. You stamped on the deck for who?
- A. The second mate; also instructed a man to go down and get the log line in.
 - Q. What side of the vessel was the log line on?

- A. The port side.
- Q. Did he get the log line in?
- A. I did not haul it in myself.
- Q. Before the collision?
- A. I could say for sure; yes, he must have. In all probability he did; I could not [73] state for certain.
- Q. Your recollection is he did get it in before the collision? A. From his own statement.
 - Q. He said he did? A. Yes, sir.
 - Q. How long was the line? A. About 200 feet.
 - Q. And he hauled it in by hand?
 - A. Yes, sir; a small line.
 - Q. Where was the man you sent to haul it in?
 - A. He was with the second mate.
 - Q. Did you see him? A. No, sir.
- Q. He was with the second mate where, in the second mate's cabin?
- A. No, sir; out on the after-deck taking in the log line.
- Q. He was not taking it in before you ordered him to do it?
- A. No, sir; he was up on the bridge deck, on the life-boat.
 - Q. And you sent him down to take the log line in?
 - A. Yes.
 - Q. How did he get down?
 - A. He went down the companion ladder.
 - Q. Where is that with reference to the bridge?
 - A. The aft end of the bridge.
 - Q. The aft end of the cabin roof?

- A. Yes, sir; the aft end of the cabin roof.
- Q. He took the log line in from the cabin deck?
- A. Yes, sir.
- Q. I forgot to ask you, you gave some testimony as an expert regarding the amount that your vessel would swing if her helm were put to port going at eight knots in half a minute's time, and your statement was from one to eight points, you could not tell?

 A. I would not commit myself.
- Q. Would not that depend on the amount the wheel was put over? A. Yes, sir.
- Q. Could anybody except the helmsman who was actually there, [74] who actually saw it tell how much she turned in that time?
 - A. I don't think they could.
- Q. Even then he would have to know how many spokes the wheel went over?
- A. Yes, sir; it would be very hard to keep track of it.
- Q. How, as a matter of fact, do you know how many spokes the vessel was put over? A. No, sir.
 - Q. When you ordered the vessel to port her helm?
 - A. No, sir; starboard her helm.
 - Q. I mean starboard her helm.
- A. No, sir; I do not know. I know he was in the act of starboarding his helm.
- Q. The only order you gave as I understand it, the only order you gave to the helmsman after the "Beaver" came in sight was an order starboarding her helm? A. Yes, sir; that is the only order.

Mr. DENMAN.—That is all.

Recross-examination.

Mr. CAMPBELL.—Q. There is no doubt in your mind but what you could swing eight points with that vessel by starboarding your helm at the speed she was running in a minute, is there?

- A. There is not any doubt?
- Q. Yes.
- A. No, sir; there is doubt; I do not know; eight points in a minute? There is room for doubt.
 - Q. How far do you think she would swing?
- A. One to eight points; I could not tell; I am not an expert on that. I never made a study of that; I never had occasion to.
- Q. If you were meeting a vessel head on stem to stem and the other vessel should hold her course and you were running at the same speed you were running this day, and should starboard your helm—
 - A. (Intg.) I would not do such a [75] thing.
- Q. And port your helm and she was a mile distant from you could not she easily clear?
 - A. Running stem to stem?
 - Q. Yes. A. And I port my helm?
 - Q. Yes. A. Yes, sir; surely.
- Q. How many points off in a minute's time would you swing? A. What was that question?
- Q. How many points could you swing off in a minute's time?
- A. I do not think it would be necessary to swing in a full minute's time.
 - Q. How far would you swing in a full minute?
 - A. From one to eight points.

- A. You know closer than that?
- A. I cannot tell; a vessel acts different on different times.
 - Q. How long have you been in this vessel?
 - A. Now?
 - Q. Yes. A. About 10 months now.
- Q. How far would she swing under those conditions in a minute? A. From one to eight points.
 - Q. Would she swing two points? A. Possibly.
 - Q. Would she swing three points? A. Possibly.
 - Q. In your judgment would she swing three?
 - A. I said possibly.
 - Q. Would she swing four in your judgment?
 - A. Possibly.
 - Q. Would she swing five? A. Possibly.
- Q. Have you not any judgment at all as to how far she would swing in a minute?
 - A. Not expert judgment.
- Q. What is your best judgment as to how far she would swing?

 A. In a minute?
 - Q. Yes.
- A. I should think she would swing two or three [76] points.
 - Q. Two or three points? A. Yes, sir.
 - Q. In a minute's time?
 - A. Three or four-well, one to eight points.
 - Q. That is as close as you can get?
- A. Yes, sir, without committing myself. If I had lots of time I would go down and try for your satisfaction.
 - Mr. DENMAN.-Q. Without committing your-

self, Mr. Beckwith, counsel is entitled to your fair judgment, and I understand your answer to be you cannot give a scientific answer.

A. If you go down there to-day and take that vessel out she might swing clear around eight points in a minute; I might do it to-morrow and it would take several hours; in some conditions she would only go two or three points.

Mr. CAMPBELL.—Q. What difference was there?

- A. That is not known to me.
- Q. You cannot tell how your vessel would swing when you starboard your helm, what effect it would have on it?
- A. If you starboard your helm it will swing to port.
- Q. That is all you know. You don't know how far she will swing in a minute, two minutes, or three minutes?
- A. I know if the "Beaver" kept right on she would have swung well clear of me.
 - Q. Is that a fair answer to my question?
 - A. I should think so.
 - Q. Is that your answer?
- A. I don't know; I cannot tell authentically how far she would swing.
- Q. If you were meeting a steamer stem to stem a mile distant under the same conditions of weather and sea that you had at this time, and making the same speed, how much would you port [77] her helm and alter her course to starboard to clear the other vessel, provided the other steamer would hold

(Deposition of Walter N. Beckwith.) her course?

A. What distance?

- Q. One mile?
- A. A point and a half or two points for safety; it would all depend on what vessel I was in.
 - Q. On the "Necanicum"?
 - A. A point and a half.
- Q. Do you think you could do it and avoid a collision under those conditions?
- A. Yes, sir, if the other vessel maintained his course and speed.
- Q. Don't you think in this case if you had starboarded your helm and not reduced her speed, kept on at full speed, you would have swung away and avoided the "Beaver," avoided the collision?
- A. I do not think so, in that case he would have struck us aft.
- Q. At the time you were three-quarters of a mile ahead and to one side, don't you think if you had kept right on and not have reduced your speed and starboarded your helm, don't you think you could have swung off?

A. He had a higher powered vessel and he could chase us around the ocean and get us.

Mr. DENMAN.—Q. By chasing you around the ocean, you mean you cannot determine—

Mr. CAMPBELL.—(Intg.) I object to counsel leading his own witness.

Mr. DENMAN.—Q. What do you mean by chasing you around?

A. I could not judge what he was going to do after he had made this change in his course; I would not

be able to tell, determine what the man on that bridge was going to do; whether he was going to port, starboard, back or go ahead; I took no chances. It was not up to me, it was up to the master of the other vessel, and the only thing for him to do to determine [78] for the safety of his own vessel, he could back her full speed and give the signal.

- Q. What was the heading of your vessel at the time of the impact? A. I did not see.
- Q. How much do you think the "Beaver" swung off her course?
- A. She must have went four points, something like that; three or four points.
- Q. She was approaching ahead of you when you saw her? A. Off to the starboard.
 - Q. 15 degrees you have put it? A. Yes, sir.

Mr. CAMPBELL.—Q. You are going to remain in the "Necanicum" as far as you know right along?

- A. I don't know.
- Q. You do not know that you are going to leave her? A. No, sir, I don't know.
 - Q. And she is plying regularly on the coast?
 - A. Yes, sir.

Mr. CAMPBELL.—I will ask that the examination be continued until we have had an opportunity of seeing the report that was filed with the owners.

Mr. DENMAN.—Then I suggest as I would like to close the deposition before this gentleman leaves port, that we take it up in the morning. I will have it here if I can get it.

Mr. CAMPBELL.—It may be I will not have any

(Deposition of Walter N. Beckwith.) questions to ask him; if I do not want to, I will let you know in time.

Mr. DENMAN.—I do not want to have the deposition hang fire in case anything happens to him, or he is drowned, we would not have the use of the deposition because the cross-examination is open.

Mr. CAMPBELL.—I will not question that point at all. [79]

Deposition of John T. Gannan, for Claimant.

JOHN T. GANNAN, called for the claimant, sworn.

Mr. DENMAN.—Q. What is your occupation?

- A. I am a sailor.
- Q. How long have you been a sailor?
- A. Well, I shipped first on the 23d of July, 1907.
- Q. Were on the "Necanicum" at the time of the collision with the "Beaver" last October?
 - A. Yes, sir.
 - Q. Where were you at the time of the collision?
 - A. I was down in the forecastle.
 - Q. In the forecastle? A. Yes, sir.
 - Q. What were you doing there?
- A. Our watch below after 12 o'clock, sitting playing cards.
- Q. Did you, before the collision, hear any conversation between the bridge and the forecastle?
 - A. Yes, sir.
 - Q. What was it? A. I heard the—

Mr. CAMPBELL.—(Intg.) Objected to on the ground as being a self-serving declaration on the part of the claimant, and hearsay.

(Deposition of John T. Gannan.)

Mr. DENMAN.—We offer it as part of the res gestae.

- A. I heard Mr. Beckwith give two whistles, her starboard side to, and he hollered to Christy, he says, "Can you see it?" He says, "Yes, I can see the starboard side too, but I can hear no whistle."
- Q. When did this occur, how long before the collision?
 - A. I should judge about 15 or 20 minutes.
 - Q. 15 or 20 minutes. Have you been drinking?

A. Well, it might have been longer than that, or it might have been shorter.

Mr. DENMAN.—This witness is evidently not in a position [80] to testify. If you want him you can take him.

Mr. CAMPBELL.—He is not my witness. The witness seems to be intelligent enough to know what you are asking him.

Mr. DENMAN.—Take the witness.

Mr. CAMPBELL.—No questions.

Mr. DENMAN.—That is all.

Mr. CAMPBELL.—What is your address, Mr. Gannan—where do you live?

A. The only place I can give you is the steamer "Necanicum," Hammond Lumber Company. I don't know what port we are going to load.

Deposition of George A. Olsen, for Claimant.

GEORGE A. OLSEN, called for the claimant, sworn.

Mr. DENMAN.—Q. Mr. Olsen, what is your occupation?

(Deposition of George A. Olsen.)

- A. I am driving a winch; I am a winchman.
- Q. Where are you occupied?
- A. On the "Necanicum."
- Q. Were you on the "Necanicum" at the time of the collision with the "Beaver"? A. Yes, sir.
 - Q. Whereabouts were you on the ship at that time?
- A. I was working amidships, pretty close to the bridge on the main deck.
 - Q. About what time did the collision occur?
 - A. Just about two o'clock.
 - Q. Do you remember the exact time?
- A. I could not say as to the time; it was just about two o'clock.
- Q. Did you see the "Beaver" or did you hear any whistles from the "Necanicum" A. Yes, sir.
 - Q. How many?
- A. I heard the fog-whistles of her and saw him blow two whistles.
- Q. How long before the collision was it he blew the two whistles?
- A. Well, it might have been two or three minutes; [81] about three minutes.
 - Q. Did you see the "Beaver"?
- A. Yes, sir, I saw the "Beaver" after we blew the two whistles, a little while after.
 - Q. How long after?
- A. It might have been about half a minute; 25 seconds or so.
 - Q. Where was she then when you saw her?
- A. She was three points on the starboard bow, about three points.

(Deposition of George A. Olsen.)

- Q. How long after that did the collision occur?
- A. About a minute, or so, I guess; something like that. He was not very far off then.
 - Q. How far off would you say he was at that time?
 - A. A little less than half a mile.
 - Q. Was there any shock from the collision?
 - A. Yes, sir, quite a shock.
 - Q. Did it knock you down?
- A. No, sir, I was holding on to a chain lashing; I could not fall down.
 - Q. How long have you been at sea altogether?
 - A. About 22 years.
 - Q. Are you going to sea to-morrow?
 - A. Yes, sir.
 - Q. On the "Necanicum"? A. Yes, sir.

Mr. CAMPBELL.—No questions.

Mr. DENMAN.—I have withdrawn the witness Gannan on account of his intoxication, and will endeavor to reproduce him when he is fit to testify, and I extend my apologies to my opponent for having given him such a witness to cross-examine. [82]

Tuesday, April 28th, 1914.

Mr. CAMPBELL.—I would like to inquire the reason for retaking the deposition of Mr. Olsen.

Mr. DENMAN.—I have recalled him.

Mr. CAMPBELL.—This man was not intoxicated the other day; the other man was.

Mr. DENMAN.—I thought it was understood between us this other man's deposition was not to be written up.

Mr. CAMPBELL.—I did not think this man was intoxicated. I want all the testimony.

Deposition of George A. Olsen, for Claimant (Recalled).

GEORGE A. OLSEN, recalled for the claimant.

Mr. DENMAN.—Q. You are a sailor, are you not,

Mr. Olsen? A. Yes, sir.

- Q. Now on the steamer "Necanicum"?
- A. Yes, sir.
- Q. Were you on the "Necanicum" at the time of the collision with the "Beaver"? A. Yes, sir.
 - Q. How long had you been on her?
 - A. About 14 months.
 - Q. About 14 months? A. Yes, sir.
- Q. Where were you say within the 10 minutes prior to the collision?
- A. I was on the main deck just in front of the bridge.
- Q. What was the condition of the weather—were there any signals blown during the time you were on the deck before the collision?
 - A. Yes, sir; blowing fog-whistles.
 - Q. How long did they continue?
- A. Blowing the whole—well, they blew the signals long after they had passed the other ship.
- Q. Kept on blowing the signals after you passed the other [83] ship? A. Yes, sir.
- Q. How long before the collision had they been blowing?
- A. They had been blowing the whistles about an hour before, I should think.
 - Q. What were you doing just prior to the collision?
 - A. I was splicing a piece of wire.

- Q. On the main deck? A. Yes, sir.
- Q. Whereabouts on the main deck?
- A. Just about amidships.
- Q. About amidships?
- A. Right below the bridge in front of the bridge.
- Q. Were there any signals blown prior—any passing signals blown prior to the collision?
 - A. Yes, sir; we blew two whistles.
 - Q. And how long before the collision was that?
 - A. I could not say exactly, a minute or two.
 - Q. What did you do then?
- A. Well, I went over the rail when I did not hear no answer and waited a little while.
 - Q. How long do you suppose it was?
 - A. It might have been 15 seconds, half a minute.
 - Q. What did you see when you went over the rail?
 - A. I saw the other ship.
- Q. Where abouts was she with reference to your vessel, in what direction at the time you saw her?
- A. She was about three points on the starboard bow.
 - Q. Did you get any signals from her?
 - A. She blew one whistle.
- Q. When you first saw her from the side of the vessel what could you see of the other vessel, her sides, or what?
- A. I saw her bow; she was in the act of turning. [84]
- Q. You heard just one whistle. What direction did she turn?
 - A. She turned to starboard, one whistle.

- Q. How much fog was there between you and her when you first saw her?
 - A. It was not very thick. It was not very heavy.
 - Q. It was not very heavy? A. Yes, sir.
 - Q. It was foggy though?
 - A. Yes, sir, it was foggy.
 - Q. How far off would you say she was?
 - A. Between a quarter of a mile and half a mile.
 - Q. Did you watch her until the collision occurred?
 - A. Yes, sir.
 - Q. Whereabouts did the vessels come together?
- A. Well, I don't know exactly how far it would be from her bow, about 30 feet; 30 or 40 feet.
 - Q. On her bow?
 - A. Yes, sir, on our bow, it was on the stem.
 - Q. Struck on the stem? A. Yes, sir.
 - Q. On which side?
 - A. It was right on the stem.
 - Q. Did she hit the anchor on either side?
 - A. She could not catch the anchor.
 - Q. Are you sure of that? A. Yes, sir.
- Q. What signals did you hear from your own vessel after the two-whistle signal?
 - A. Blow three whistles.
 - Q. What does that mean?
 - A. They are reversing the engine.
- Q. Could you tell whether your vessel was reversing the engines, or not?
 - A. Yes, sir, you could tell.
 - Q. You could tell? A. Yes, sir.
 - Q. How could you tell?

- A. Tell by the vibration of her when she started up.
- Q. Did your vessel have any way on at the time of the collision? A. She had sternway. [85]
 - Q. Had sternway on? A. Yes, sir.
 - Q. How about the "Beaver"?
- A. The "Beaver" had a pretty good headway when she passed us.
 - Q. How could you tell that?
 - A. I could see in front of her bow, the white water.
 - Q. How much speed do you think she had on her?
 - A. She might have had about five miles.

Cross-examination.

Mr. CAMPBELL.—Q. What is the distance between the break of your forecastle-head and the bridge?

- A. Well, I could not say exactly, about 80 or 90 feet.
- Q. And how far from the bridge were you standing?

 A. Well, I was right below.
 - Q. Right below the bridge?
 - A. Yes, sir, a little in front of the bridge too.
 - Q. About 10 or 15 feet?
 - A. About 10 feet, I guess.
- Q. And how high is the bridge above the main deck? A. About 15 feet, I guess.
 - Q. Any more than that?
- A. It might be a little more; not much more than that though.
- Q. Then, you say standing where you were you heard the "Beaver's" whistle?
 - A. I heard the "Beaver's" whistle; yes.

Mr. DENMAN.—At which place, at the side?

Mr. CAMPBELL.—Q. Wherever he was at the time he heard it. He said he was on the main deck about 10 or 15 feet from the front of the bridge at the time you claim to have heard the whistle?

A. Yes, sir.

Q. Amidships? A. Yes, sir.

Mr. DENMAN.—That was not his testimony.

Mr. CAMPBELL.—Q. Is that your testimony now?

A. I [86] heard his whistle; that is when he answered our two.

Q. Where were you standing at that time, 10 or 15 feet in front of the bridge; is that right?

A. Yes, sir.

Q. In the middle part of the vessel, amidships?

A. Yes, sir, amidships; when he blew the whistle I went over to the rail.

Q. Did you have any difficulty in hearing this one whistle of the "Beaver's"?

A. It was not much of a whistle he blew.

Q. Did you have any difficulty in hearing it?

A. Theard it.

Q. You heard it? A. Yes, sir.

Q. You knew what it was? A. Yes, sir.

Q. When did the whistle from the "Beaver" come with respect to the two whistles from the "Necanicum", 8

A. It was a few seconds after we blew the two whistles.

Q. Immediately afterwards?

- A. A few seconds; about 10 seconds.
- Q. And it was then that you walked to the starboard side of your vessel? A. Yes, sir.
- Q. And at that time you saw the "Beaver" three points on your starboard bow? A. Yes, sir.
 - Q. How far away?
- A. Well, a quarter to half a mile; between a quarter and half a mile.
 - Q. Between a quarter and half a mile?
 - A. Somewhere near that; I could not say exactly.
- Q. It might have been as much as three-quarters of a mile, might it not?

 A. I do not think so.
- Q. Would you think the mate of your vessel on the bridge was in a better position to judge the distance than you were?

 A. He might be.
- Q. Do you know what was done with the helm of your vessel upon blowing two whistles?
 - A. No, sir, I don't know. [87]
- Q. Did you give any attention to whether or not your vessel was changing her course? A. No, sir.
 - Q. You did not pay any attention to that?
 - A. No, sir.
- Q. But it was not until after you had heard the "Beaver's" whistle that you walked to the side?
 - A. Yes, sir.
- Q. And it was not until you walked to the side of your vessel that you saw the "Beaver"?
 - A. I did not see her before.
 - Q. How long did you stand at the side there?
- A. I could not say; it was a few seconds, I guess, until she struck.

- Q. How long in your judgment was it from the time you reached the side of your vessel before the collision; how many seconds?
 - A. I don't know exactly.
- Q. What is your judgment about it, 10 or 15 seconds?
- A. A little more than that; about half a minute, I guess.
 - Q. Half a minute? A. Yes, sir.
- Q. What were you doing there at that time when you were standing at the side?
 - A. I was looking at the ship.
 - Q. Were you looking at the water?
- A. I looked at the water, too; just looking at the ship.
- Q. Did you look at the water alongside of your vessel? A. Yes, sir.
 - Q. How high is the rail?
 - A. The rail is about four feet; four feet six.
- Q. How high does it come to you, up to your shoulders? A. Up there (indicating).
 - Q. How tall are you? A. Five feet four.
 - Q. Five feet four inches? A. Yes, sir.
 - Q. And the rail is four feet six?
- A. About four feet six. There is a waterway about eight feet above the deck-eight inches above the deck.
 - Q. Did you step up on the waterway?
 - A. Yes, sir. [88]
 - Q. What did you do that for?
 - A. Because it is that wide from the rail, you got to

(Deposition of George A. Olsen.) when you go to the rail.

- Q. How do you know your vessel had sternway on her at the time of the collision?
 - A. I could see by the water.
 - Q. What was there about the water to indicate it?
 - A. The water goes ahead.
 - Q. The water was ahead?

Mr. DENMAN.—He said the water goes ahead.

- Mr. CAMPBELL.—Q. Do you know whether the fact the water was going ahead would necessarily indicate she had sternway?

 A. Yes, sir.
- Q. Is it not a fact when you begin to reverse any vessel she will throw the water towards your bow?
- A. No, sir; it might after a while, little way; she will have sternway by that time.
- Q. How far has the water got to get before you have sternway?

 A. I do not know.
 - Q. How far in your judgment?
 - A. I could not say.
 - Q. Half the length of the vessel?
- A. I don't think so. I don't think it will reach that far.
 - Q. One-third length of the vessel?
 - A. It might be.
- Q. In your judgment if you can see backing water from the propeller one-third the length of the vessel from the stern your vessel has sternway?
 - A. She will have sternway then.
- Q. Where did you walk to the side of your vessel, directly opposite the point where you were standing when you heard the whistle?

- A. A little further ahead.
- Q. How much?
- A. Not very much; about eight or 10 feet.
- Q. What other whistles did you hear from the "Beaver" besides the one whistle?
- A. I could not say; he was blowing some [89] whistle, but I do not know what it was.
 - Q. Why don't you know?
 - A. I could not make it out.
- Q. You had no difficulty in making out the first one?
- A. That was one; otherwise I do not know what he blew.
 - Q. Did you hear them?
 - A. He was blowing something.
 - Q. You heard them all right?
- A. He was blowing some whistles, I do not know what it was.
 - Q. What did you think they were at the time?
 - A. I could not say.
- Q. Didn't you entertain any thought at the time as to what they were? A. No, sir.
- Q. Had your vessel been blowing fog-whistles right up to the time that she blew her passing whistles? A. Yes, sir.
- Q. Were you the man that the mate sent to call the sailors out of the forecastle? A. No, sir.
- Q. Have you discussed this case since your deposition was taken before with Mr. Denman?
 - A. No, sir.

- Q. Have you not talked it over with your attorney at all?
- A. The last time I was up here he spoke to me about it.
- Q. Has he not gone over the case with you this morning? A. No, sir.
 - Q. Who have you discussed it with?
 - A. Mr. Denman.
 - Q. Have you discussed it with Mr. Burnett?
 - A. No, sir.
 - Q. With the officers of your vessel? A. No, sir.
 - Q. Anybody connected with the company?
 - A. No, sir.

Mr. CAMPBELL.—That is all.

Mr. DENMAN.—That is all. [90]

Deposition of John T. Gannan, for Claimant (Recalled).

JOHN T. GANNAN, recalled for the claimant.

Mr. DENMAN.—Q. Mr. Gannan, were you on the steamship "Necanicum" at the time of the collision with the "Beaver"?

- A. Yes, sir.
- Q. How were you employed on her then?
- A. As a sailor.
- Q. Where were you at the time of the collision?
- A. In the forecastle.
- Q. Was it your watch below? A. Watch below.
- Q. What time did you go off watch? A. 12:30.
- Q. What were you doing down there?
- A. We were playing a game of cards; we gener-

(Deposition of John T. Gannan.) ally do after dinner before we turn in.

- Q. Did you hear any fog-signals from your vessel prior to the collision? A. Yes. sir.
- Q. How long had they been blowing, do you remember?
- A. Blowing the fog-whistles all forenoon and up to the time of the collision. It was foggy that day.
- Q. Did you hear prior to the collision any conversation or communications from the lookout to the bridge? A. Yes, sir.
- Q. What did you hear—what time was this, how long before the collision?
- A. Well, I could not exactly say; it was a very short while before the collision; I could not say exactly how many minutes.
 - Q. What did you hear?
- A. I could hear the man from the bridge shouting and then I heard the lookout-man say, "I can see the starboard side; I cannot hear no signals from him."
- Q. Did you hear any passing signals from your vessel after that?
- A. I heard two whistles, and then I heard the lookout-man say, "I can see the starboard side"; and it was very short then, I could not exactly say how long, it was a very short [91] time I heard three whistles, full speed astern.
- Q. Do you know whether she went full speed astern?
- A. You could tell by the motion of the engine that she was backing up.
 - Q. What happened when she collided?

- A. We all got knocked on the floor; we were sitting there playing cards.
 - Q. What did you do then?
- A. We got ourselves up together, and the forward winch driver, he ran to the paint locker and got a lantern, so I turned around and raised the trap down into the forecastle, the trap-door to go down into the hold without taking the hatches off—the hatches were on; I went down into the hold to see if there was any water coming in.
- Q. You did not go on deck until sometime after the collision?
- A. I did not go on deck until quite a while after the collision. It was—

Mr. DENMAN.—That is all.

Cross-examination.

Mr. CAMPBELL.—Q. What were you going to say?

A. I was going to say it was a little bit of a while to get down through the small trap and get up again.

Q. How did it happen that you went down through a small trap into the lower hold without going out on deck from the forecastle when you knew that your vessel had been in a collision?

A. That was the first thing, as soon as the winch-driver got the lantern, to get down into the hold to see if there was any water coming in, any leak. The vessel had been struck,—in fact at the time I did not know where we was struck.

- Q. Where is the forecastle on the main deck?
- A. The forecastle? [92]

(Deposition of John T. Gannan.) Q. Yes.

A. It is on the main deck; she is what we call a single ender.

Q. And it is immediately beneath the forecastle-head?

A. Walk right off the main deck, that is, it is over the hold, right in the forecastle door.

Q. How many of you were in there playing cards?

A. There was a sailor, two firemen and myself, and the forward winch-driver was in there.

Q. All engaged in playing a game of cards?

A. Yes, sir.

Q. And the first you heard was you heard the man on the bridge shouting?

A. I heard a man on the bridge shouting, but could not understand exactly what he was saying; the bridge is quite a distance from the forecastle-head.

Q. About 90 feet, is it not?

A. Yes; about that. It is 105 feet from the coam of the forecastle-head to the coam of the poop-deck; that would make the forecastle about 90 feet to the bridge; that is about where the officers stand on the bridge.

Q. And in response to the shouting that you heard from the bridge you heard the lookout say that he could see the starboard side, but he could not hear any whistle?

A. I cannot hear no signals from him.

Q. And you then continued playing cards all the time? A. Still continued playing cards.

Q. And then you heard after that, you say you

heard three whistles from your yessel?

- A. After that I heard two whistles indicating starboard side to.
- Q. Did you hear any whistles from the other vessel after the two whistles?
- A. I heard no whistle from the other vessel at all. [93].
- Q. After you heard the two whistles you heard three whistles from your vessel?
- A. I heard three whistles, very little while; one of the firemen made the remark, he says, "There is full speed astern."
- Q. At the time of the collision you people were knocked down on the deck?
 - A. Not on the main deck; no.
 - Q. Were you knocked down?
 - A. We were sitting around a little table.
 - Q. On the floor of the forecastle? A. Yes, sir.
 - Q. You were all knocked down on that?
- A. You have to step over a step about that high from the forecastle to the main deck (indicating).
- Q. There is a stringer or break water across the after end of the forecastle-head?
 - A. Something over 24 inches.
- Q. You were still playing cards, still sitting around the table when the collision came?
- A. We were at the table when the collision struck and we all got scratched.
- Q. How long do you think it was after you heard the three whistles until the collision?
 - A. I could not exactly say how many seconds or

(Deposition of John T. Gannan.) minutes; it was a very, very short while.

- Q. 15 or 20 seconds?
- A. It might have been that, and it might have been some more.
 - Q. A very short interval of time?
 - A. Yes, sir; a very short time.
- Q. After you were knocked down on deck did you know what vessel had struck you?
 - A. Not until after I came up out of the hold.
- Q. And without going out of the forecastle at all—who did you say, the fireman or boatswain went and got the lantern? [94]
 - A. The forward winch-driver got the lantern.
 - Q. Where was the lantern?
 - A. Down in the paint locker.
 - Q. Is that in the forecastle too?
- A. It is not inside the forecastle; it is right outside—here is the forecastle door and the paint locker is virtually here to the rear after you step out of the door on the starboard side of the ship.
 - Q. On the starboard side of the ship?
- A. Here is our forecastle where the sailors sleep and that was a room partitioned off that the firemen occupied.
- Q. Make me a little drawing and give me the arrangement of those rooms; assume that what I am drawing is the outline of the shape of the ship. Show me the arrangement of the rooms in the forecastle. A. Here is the—
 - Q. (Intg.) Draw it across.

- A. Do you want me to draw the forecastle and the firemen's quarters?
 - Q. Yes. A. That is the firemen's quarters.
 - Q. Mark that L.
 - A. Yes, sir; on the starboard side of the ship.
 - Q. Here on this side?
- A. Yes, sir. Here is what you call the forecastle; it runs clear up and then this off here is where the winch driver is in with the sailors; there is no room off between the winch driver and sailors.
- Q. All this room where I draw the dotted line is one room? A. Yes, sir.
 - Q. What is that called, the forecastle?
- A. Yes, sir, with the exception of one room they call the fore peak.
 - Q. Is there a partition there? A. Yes, sir.
 - Q. Show me the partition.
- A. The forecastle is right straight up in the point. This partitions off the firemen from here to there; here is the door going into the fore peak, [95] what we call the fore peak, where the anchor spouts come through.
- Q. The forecastle generally is where I have drawn the dotted line? A. Yes, sir.
 - Q. That is it? (Pointing.) A. Yes, sir.
 - Q. That I mark forecastle? A. Yes, sir.
- Q. And forward of that in the very eyes of her is the fore peak?
 - A. Is what they call the fore peak.
 - Q. Whereabouts is the locker?
 - A. Then virtually here is the paint locker—I beg

your pardon, I have got that wrong. Here is your paint locker, it is outside the firemen's door; just the same the the toilet is on the port side. You have got to step out.

- Q. Mark an X where the firemen's door is.
- A. There is the firemen's door, and here is the paint locker (indicating).
 - Q. And the paint locker is what I mark 3?
 - A. Yes, sir.
 - Q. And the toilet is what I mark 4?
- A. Yes, sir. You have got to step out of the forecastle to go into the paint locker, or to go into the toilet.
- Q. Where is there a door from the firemen's quarters marked 1 into the forecastle?
- A. The firemen cannot come into the forecastele from their room without stepping out on the main deck and come in the door.
- Q. Is that the door into the forecastle from the A. Yes, sir. main deck?
 - Q. Mark that 2 X. A. Yes, sir.

Mr. CAMPBELL.—I will offer that drawing in evidence.

(The drawing is marked "Libelant's Exhibit 2.")

- Q. And the forward winch-driver stepped out of the forecastle to the paint locker and got the lantern?
 - A. Yes, sir. [96].
 - Q. And came in the forecastle with the lantern?
- A. As soon as he came in with the lantern I raised the trap-door. We got on our feet at the time he came back.

- Q. Had he been knocked off his feet?
- A. He was standing up between—coming down here is what they call—where the anchor chain runs down into the chain locker, there is two wooden spouts run up there and he was standing between those two spouts when she struck.
 - Q. Whereabouts was the table?
- A. The table would be right about here, we will say that close, just about that way; that is the table; there is about that much space, I should judge.
 - Q. Mark that 6.
- A. Yes, sir; there was about that much space between the table and going out of the forecastle to the main deck from here to here. (Indicating).
- Q. Where are the two uprights that the winch-driver was standing between?
 - A. That is a little bit off here.
 - Q. Mark them with two small circles?
- A. Yes, sir. Only virtually one man could stand in between them.
- Q. He was standing there at the time of the collision? A. The winch-driver.
- Q. And he went out into the locker and got the lantern and came back?
 - A. Yes, sir, and lit it.
- Q. At the time he got back you people just picked yourselves off the floor?
 - A. Got straightened up.
- Q. Then you opened the trap-door through the floor of the forecastle and went down into the lower hold to see what damage was done? A. Yes, sir.

Q. Did he tell you what steamer had struck you?

A. I did not know at the time, not until I came up.

He went down first [97] and I followed him
down. I opened the trap-door and he went down
and I followed him down. There was no water there
and we came up. Then I know it was the "Beaver."

Q. How did you know it was the "Beaver" then?

A. From what Prentagast said.

Q. Did you see her then?

A. At the time I got out on the main deck she was too far away, but I heard Prentagast holler, "My God! Nothing but water is coming out of her whistles."

Q. After you got on deck?

A. Just before I went down in the hold.

Q. Where was Prentagast?

A. Prentagast at that time was standing on the hatches, when I hear Prentagast holler this. I heard him holler, "My God! There is nothing but water coming out of her whistles." I could not say how long it was afterwards before I did come out of the forecastle, and then went up on the forcastle-head and looked over the bow.

Q. How long was this when you heard Prentagast call out—how long was that before the collision?

A. How long was that before the collision Prentagast hollered this out?

Q. Yes.

A. Prentagast did not holler this out until after the collision.

Q. Where were you when you heard him, still on

(Deposition of John T. Gannan.) the floor? A. Still on the floor.

- Q. But you said that you had just picked yourself off the floor when the winch-driver came back with the lantern? A. I got up off the floor.
- Q. You were still on the floor when you heard Prentagast say there was water coming out of her whistles? A. No, sir, I was up. [98].
- Q. Had the winch-driver then got back into the forecastle at that time?
- A. The winch-driver did not get inside of the forecastle; he had not time to get inside the forecastle. He has got back to the forecastle door with the lantern; at that time I was up on my feet.
- Q. At the time you heard Prentagast speak about the water in her whistles where was the winchdriver?
- A. Standing in the door taking the globe off the lantern so he could light it.
- Q. How far was it from that table outside of the forecastle?
- A. How far was it from the table outside of the forecastle?
 - Q. Yes.
- A. I think it is about—you might call it about five feet.
- Q. And at no time did you go out to see what had struck you until after you came out of the hold?
 - A. Not until quite a while after the collision.

Mr. CAMPBELL.—That is all.

Redirect Examination.

Mr. DENMAN.—Q. How is the forecastle venti-

lated? A. Four port holes.

- Q. Were they closed or open on this day?
- A. Open.
- Q. How was the door prior to the collision?
- A. The door was wide open.
- Q. I understand when you came on deck you could not see the "Beaver"? A. No, sir.

Mr. DENMAN.—That is all.

Recross-examination.

Mr. CAMPBELL.—Q. Did anyone go to the port holes in the side of the forecastle and look out when your vessel blew three whistles and reversed?

- A. Not that I know of, sir. It is pretty [99] high up.
- Q. Was it not an unusual circumstance to have your vessel blow three whistles and reverse full speed in the fog?
- A. Very, sir; very unusual, sir. That is the first time I ever heard him blow full speed astern.
- Q. Yet you continued playing cards there after that time, until after the collision?
 - A. Playing cards until she struck.
- Q. You did not play cards after she struck, did you? A. No, sir. [100]

Monday, May 11th, 1914.

Deposition of Austin Keegan, for Claimant.

AUSTIN KEEGAN, called for the claimant, sworn.

Mr. DENMAN.—Q. Captain Keegan, what is your occupation? A. Master of crafts; ship master.

- Q. How long have you been to sea?
- A. About 22 years.
- Q. When did you get your first papers as an officer?
- A. I think in 1897—
- Q. (Intg.) Have you been on board steam and sail?
- A. (Contg.) —I cannot give you that from memory. I have not my papers with me, and I cannot give you that from memory.
 - Q. 20 years ago, do you think?
- A. The first papers I had were for sail; that was in, I think, 1902, along in there; I would not say for sure.
 - Q. 1902, for steam or sail? A. Sail.
- Q. When did you first get your papers for steam vessels? A. I don't remember.
 - Q. Within the last ten years?
 - A. I would say about nine or ten years ago.
 - Q. About nine or ten years ago?
 - A. Yes, sir, roughly.
- Q. Have you been steadily at sea during all that time, that is 22 years?

 A. On vessels and at sea.
- Q. Were you on the "Necanicum" at the time of her collision with the "Beaver" last fall?
 - A. Yes, sir.
 - Q. In command of her?
 - A. I was master of the vessel.
- Q. Do you remember the day of the collision; you recall that day, do you?
 - A. I recall the day, but I don't recall the date.
 - Q. What type of vessel is the "Necanicum"?

- A. She is a lumber carrier, termed on this coast a steam schooner. [101]
 - Q. Was she carrying on that day any lumber?
 - A. No, sir; we were bound north for a cargo.
 - Q. Was her draft forward and aft?
- A. Her draft aft was about 16 feet; forward about two feet, I would judge.
- Q. Do you remember the exact figures, whether it was two or three or four, or what?
- A. Well, our figures are put down when we leave the dock.
- Q. Do you remember exactly what they were that day?
- A. At the time we left the dock she was drawing 16 feet aft and two feet forward.
 - Q. Is that the usual condition for her to be in?
 - A. That is her usual condition.
- Q. What was the condition of the sea on the afternoon of the day of the collision? A. Smooth.
 - Q. Any wind? A. Very light southerly wind.
- Q. Was the wind sufficient to affect in any way the movement of the vessel?
 - A. It would not affect the vessel at all.
- Q. When did you first see the "Beaver" on that afternoon?
- A. Well, I would say somewhere around two o'clock; in that neighborhood; probably before that.
 - Q. Where was she then?
- A. She was one point on our starboard bow; distant about 5 miles, I would judge, roughly.
 - Q. What was the condition of the weather prior

to that time? A. Foggy.

- Q. You saw her a distance of 5 miles; the fog had lifted then?
 - A. The fog had lifted at the time I saw the vessel.

Q. What did you do then?

- A. My vessel continued on her course when I left the bridge.
 - Q. Did the fog set in again?
 - A. Not at that time.
 - Q. Later on?
 - A. Shortly before the collision it set in. [102]
 - Q. When did you next see the "Beaver"?
 - A. About somewhere around 2:20, I would judge.
 - Q. Where were you when you next saw her?
- A. I was on the starboard after-deck of the "Ne-canicum."
 - Q. Where had you been just before that?
 - A. In the toilet.
 - Q. Where is that situated?
 - A. On the starboard after-deck.
- Q. Where was the "Beaver" when you then saw her with reference to your vessel?
- A. When I again saw her she was on our starboard bow.
- Q. Whereabouts on the starboard bow, how many points about? A. About two points.
- Q. Can you see from where you stood on the "Necanicum" as you come out of the toilet dead ahead of the "Necanicum" looking forward?
 - A. No, sir; you cannot see dead ahead.
 - Q. What is the reason for that?

A. Well, you are not on the bridge; the "Necanicum's" bow is high out of the water, and you cannot see ahead of what we might term the poop deck, but you can see any vessel, or land or anything else on the starboard side of the vessel.

Q. What did you do when you saw the "Beaver"?

A. I went on the bridge.

Q. Were any signals blown from your vessel to the "Beaver"?

A. When I arrived on the bridge my first officer blew two blasts to the "Beaver."

Q. What, if any, orders were given from your first officer?

A. I heard my first officer say, "Starboard your helm."

Q. What was done then, or what did you see then?

A. I saw the "Beaver" alter her course sharply across my bow.

Q. What did you do then?

A. I ordered the helm hard aport, and backed the vessel full speed astern; backed my vessel full [103] speed astern. I gave three blasts of my whistle to indicate that I was going full speed astern, or, in other words, that my engine was reversed.

Q. How long was it between the time that the order was given to starboard the helm to your order hard aport with the reversing?

A. Well, at a rough estimation I would say about 10 seconds; that is a rough guess.

Q. Was it any considerable lapse of time, Captain?

A. No considerable lapse of time; just a rough guess.

Q. Had you in the interim seen the vessel turning to her starboard?

A. I saw the vessel swing sharply across my bow; our vessel's bow.

Q. Did she ever get clean across your bow prior to the collision?

A. Well, I would say she was on an angle of about with our keel, I would say 50 degrees across our bow when she struck. Prior to the time of the collision both vessels, I presume, were backing; mine was backing.

Q. What is the effect on your vessel if reversing full speed astern while the vessel is still going ahead under her previous momentum; which way does your vessel turn?

A. She will carry headway a short length of time after reversing the engines; then her bow will swing to starboard.

- Q. What sort of wheel have you, a right-hand or left-hand? A. Right-hand wheel.
 - Q. I am speaking now of the propeller.
 - A. A right-hand propeller.
- Q. As I understand it, then, when you first saw the "Beaver" she was two points on your starboard bow. You thereafter saw her turning to cross your bow?

A. When I first saw the "Beaver" she was about five miles distant one point on [104] our starboard bow.

Q. The second time you saw her?

A. The second time I saw her she was two or more points on my starboard bow; two points I would roughly say, in that neighborhood.

Q. Then you say she began to swing across your bow. Then came the order porting your helm and reversing full speed astern?

A. We saw the "Beaver" on our starboard bow. When I came out of the toilet I saw the whole starboard side of the "Beaver" plainly. I then went on the bridge and as I was approaching the bridge the first officer gave two blasts of his whistle to the "Beaver" of the "Necanicum's" whistle. I then saw the "Beaver" alter her course sharply across our bow; she answered our two blasts with one; I backed my vessel full speed astern and ordered my helm hard aport.

Q. Had your vessel gained sternway before the collision?

A. My vessel had gained sternway about—she had gained sternway about 45 seconds prior to the collision.

Q. You say the vessel struck at an angle of how many degrees?

A. I would say about 45 or 50 degrees across our bow; about 50 degrees, I would say.

Q. What was the effect; was there any considerable shock?

A. There was considerable shock; my vessel was driven astern hard enough to knock me down, and every man on the vessel that was not holding on to something was knocked down. My vessel went astern

fast enough to twist her rudder stock off and she took the wheel out of the man's hand, the man at the wheel.

- Q. Was there any permanent injury to the steering gear?
 - A. There was; her steering gear was crippled.
 - Q. To what extent?
- A. Her tiller was bent so that we [105] could not steer the vessel; her rudder stock was twisted almost off, and had there been any rough weather at the time we would have been in a helpless condition.
- Q. You say that your vessel was driven back. What speed would you say the "Beaver" had at the time of the collision?
- A. Well, I was not in a position to know, but I could see she had a wave on her bow and would estimate her speed about seven or eight knots.
 - Q. Did she ever stop?
- A. She never stopped; she never stopped her headway; I don't mean to say that she did not stop on the ship, that is stop her engines, but I mean to say her headway never stopped.
- Q. After the collision, what did she do?
 - A. She went on about her business.
 - Q. How soon did she disappear?
- A. I would say somewhere around three or four minutes; three minutes afterwards, in that neighborhood, she was out of sight in the fog.
 - Q. The fog had come down again?
- A. The fog had settled down; she continued on her way as far as I know.

- Q. Did she make any inquiry of you as to your condition? A. She made no inquiry whatever.
- Q. After she passed on did she ever turn around towards you?
 - A. Made no turn at all; continued on her course. Mr. DENMAN.—That is all.

Cross-examination.

- Mr. CAMPBELL.—Q. What was the course of the vessel as you observed it to be when you first saw her?
- A. She appeared to be on a parallel course with mine.
 - Q. How close did you think she would pass to you?
- A. When I first saw her I figured she would pass about a mile to the [106] starboard of us; that is, of us.
- Q. Why do you say she was on a parallel course to you if you saw her first bearing a point on your starboard bow?
- A. I figured I saw the vessel about five or six miles off bearing one point on the starboard.
- Q. Would that indicate to you she was on a course that was parallel to yours?
 - A. Yes, sir, it would.
 - Q. Where had you taken your last bearing?
 - A. What?
- Q. Where had you taken your last bearing, the last bearing you had that day before the collison?
 - A. Point Reyes.
 - Q. What time of day did you pass there?
 - A. Well, I have forgotten just the hour.

Q. Where is your log-book?

A. It is aboard the "Necanicum," I presume.

Mr. CAMPBELL.—Has that bridge log been produced yet?

Mr. DENMAN.—You have not demanded the bridge log.

Mr. CAMPBELL.—Yes, I have several times.

The WITNESS.—The log is aboard the vessel.

Mr. CAMPBELL.—I desire to see the bridge log of this vessel.

The WITNESS.—I presume the bridge log is still aboard the vessel.

Mr. DENMAN.—Q. Did you have anything to do with the bridge log?

A. Nothing whatever, only just to verify it, the same as in all steamers.

Q. That is your log-book?

A. San Pedro towards Eureka; of course, the voyage has nothing whatever to do with this. This is Wednesday the 29th of October. What has the bridge log to do with the ship's log; besides they copy the bridge log in. [107]

Mr. CAMPBELL.—Q. You say you took your last bearing at Point Arena.

A. Point Reyes.

Q. Do you recall what the bearing was?

A. As I remember it was foggy off Point Reyes and I sounded to find the distance off hearing the whistle, getting my position by sounding.

Q. What distance did you say you passed off Point Reyes?

A. By sounding, I think it was somewhere between a mile and a mile and a half; somewhere about two miles roughly judging. 37 fathoms of water I think I had on a cast of the lead. You can see it there, though. See what the cast was. "Cast lead 38 fathoms of water. 8:40 lead 27 fathoms of water Point Reyes whistle abeam 27 fathoms." Now, have you a chart? We can tell 27 fathoms off Point Reyes by a chart easily.

Q. What distance do you estimate that to be?

A. This cast was 37 fathoms. Here is a note of my own, "37 fathoms of water off Point Reyes." There is a note; that is my own handwriting right there. "Note, this cast was 37 fathoms. A. K. Master." That is my own handwriting.

Q. What does the previous sounding mean?

A. That was a mistake; I took the sounding myself; the man on the bridge misunderstood me and put down 27 instead of 37, you see.

Q. When did you make this notation?

A. At the time I always sign the log.

Q. Who wrote this log up we have before us?

A. The first officer, Mr. Beckwith.

Q. And you subsequently changed it by putting in that note. "Note this cast was 37 fathoms"?

A. This, I think, was in the first mate's hand. We will have to have the pilot-house log-book to know who put down that 27 instead of 37. [108]

Q. What course did you steer north of Point Reyes? A. Northwest half west magnetic.

Q. And you estimate your passing distance off

Point Reyes about a mile?

- A. It is more than that; that would be two miles. We can see here, 37 fathoms off Point Reyes is about two miles off, in that neighborhood.
 - Q. What is 27 fathoms?
 - A. That is closer in.
 - Q. How much? A. Oh, I cannot say.
 - Q. What is your judgment, Captain?
 - A. Oh, probably three-quarters of a mile, roughly.
- Q. When you saw the "Beaver," I understand she bore about a point on your starboard bow and you judged she would pass you a mile inside of you?
 - A. Yes, sir.
 - Q. At that time you were on the bridge?
 - A. Yes, sir.
 - Q. How did you happen to be on the bridge then?
- A. Owing to the fact it had been foggy all the morning.
- Q. What speed had you been running in that fog during the morning?
 - A. Going about seven and a half or eight knots.
- Q. The telegraph was set at full speed all the time, was it not?
- A. Yes, sir; the telegraph was at full speed, but we had an understanding with the engineers always that when fog set in that they were to cut her down so that—
- Q. (Intg.) Did you give them any orders on this particular day to cut them down? A. I had.
 - Q. On this particular day you had?
 - A. Yes, sir.

- Q. How did you communicate your orders?
- A. By whistle from the bridge.
- Q. By whistle from the bridge?
- A. Telephone from the bridge, telephone tube.
- Q. What did you say to them?
- A. Foggy, and to keep her [109] so she would not pop when we stopped the vessel. You did not get my meaning. The standing order on the "Necanicum" was this: in foggy weather when we start to blow fog-whistles they were to cut the steam down so if I stopped the vessel immediately that the vessel would not pop; that is, her safety valve would not break while we were listening for a blast of another vessel, and that order had been carried out all the time I was master of that ship.
- Q. How much reduction in steam pressure would that mean?
 - A. I do not really know; I am not an engineer.
- Q. If those were the standing orders why did you give a special order this day?
- A. Just saying it was thick fog and to comply with the orders I had given sometime before that.
- Q. Have you a distinct recollection of having telephoned down to the engine-room and having given that order this day?

 A. I have.
- Q. In view of the fact you had given standing orders?
- A. Somewhere about 10 o'clock I had whistled down and told them it was foggy, getting foggy; it looked as though it was going to get foggy and not to press her too hard.

- Q. Had you given any orders subsequent to 10 o'clock in the morning? A. No, sir, I had not.
- Q. How would the man in the engine-room know it was foggy or not?
 - A. He would know by hearing the whistle.
 - Q. By hearing the whistle? A. Yes, sir.
- Q. And he was supposed to control himself by that whistle?
 - A. Yes, sir, of course; unless he was told otherwise.
- Q. He was not told otherwise after 10 o'clock in the morning?
 - A. He was told at 10 o'clock. [110]
 - Q. I said after? A. It was not necessary.
 - Q. Was it thick fog from 10 o'clock on?
 - A. It was.
 - Q. Up to what time?
 - A. Two o'clock along about that neighborhood.
 - Q. Two o'clock? A. Yes, sir.
- Q. Why did you pull your lookout off the forecastle head about 2 o'clock then?
 - A. Because the weather had cleared up.
- Q. Is it not your custom to maintain a lookout on the forecastle-head at all times?
 - A. In a bright day like?
 - Q. Yes. A. No, sir.
 - Q. You do not do it?
 - A. No, sir; it is not necessary.
- Q. How long had you had your lookout off the forecastle-head?
 - A. Probably about 10 or 15 minutes.
 - Q. Did you send him back yourself or did the first

(Deposition of Austin Keegan.) officer? A. The first officer.

- Q. Where was he in the meantime?
- A. The lookout?
- Q. Yes.
- A. I don't really know; probably he was taking a walk around the deck.
- Q. Don't the rules of the road require you to maintain a lookout all the time A. No, sir.
 - Q. They do not? A. No, sir.
 - Q. That is the way you navigate your vessel?
 - A. Yes, sir.
- Q. How long did the "Beaver" remain in sight after you first saw her before the fog had again shut in?
 - A. Oh, probably about—when I myself saw her?
 - Q. Yes.
 - A. You are speaking of how long I had seen her?
 - Q. How long did you keep her in sight?
 - A. I had seen her about five minutes or so.
- Q. At the time you first saw her you did not have a lookout [111] on the forecastle head?
 - A. Yes, sir.
- Q. I thought you had pulled him off when the fog raised?
- A. Yes, sir, the lookout was on the forecastle head when we first saw the "Beaver."
 - Q. You pulled him off after that?
 - A. The fog had cleared up.
 - Q. You pulled him off after that?
- A. He was told it was not necessary to keep a lookout any longer.

- Q. Who told him? A. The mate, I presume.
- Q. You said that was done; have you any knowledge about it?
- A. I do not know whether he came off the lookout. or not.
 - Q. Why did you say just now the mate told him?
- A. I say when I left the bridge the fog had cleared up and there was no lookout necessary; the weather was clear.
- Q. Do you know whether or not there was a lookout on there at the time? A. Which time?
 - Q. At the time you saw the "Beaver"?
- A. The lookout was on the forecastle-head at the time I sighted the "Beaver."
 - Q. Was he there when you left the bridge?
 - A. Yes. sir.
- Q. So you do not know whether he was pulled off or not? A. I do not know.
- Q. You do not know whether the mate told him there was no necessity to keep a lookout?
 - A. That was the mate's orders.
 - Q. I say you do not know?
- A. I do not know whether he came off the lookout, or not.
- Q. You examined the mate's statement before he handed it in to the Inspectors? A. I did not.
 - Q. Did you file a statement with him?
 - A. I filed a statement with the Inspectors.
- Mr. CAMPBELL.—Have you copies of those statements [112] Mr. Denman?

Mr. DENMAN.—Yes, have you not copies?

Mr. CAMPBELL.—No. I should like to see the mate's also.

Mr. DENMAN.—I cannot find it. I was looking for it.

Mr. CAMPBELL.—You had it the other day.

Mr. DENMAN.—If it is not here we can get the Inspector's

Mr. CAMPBELL.—I will ask that this cross-examination be continued until the bridge log is furnished.

The WITNESS.—It is on the ship yet, I think.

Mr. CAMPBELL.—Q. When are you going to sea, Captain? A. I really do not know.

- Q. You are ashore now? A. I am.
- Q. Out of the "Necanicum?"
- A. Yes, sir; in other words, I was discharged.
- Q. Will you be here in the morning
- A. If you wish.

Mr. CAMPBELL.—I would like to have him go, Mr. Denman, until you get the bridge log.

Mr. DENMAN.—That is all right; don't you want to go on with your examination and get what you can in. I don't imagine there will be much in the bridge log for you.

Mr. CAMPBELL.—You have seen the bridge log and I have not.

Mr. DENMAN.—No, I have not.

The WITNESS.—This is a copy of the bridge log you have right here.

Mr. CAMPBELL.—I have asked for the bridge log.

Mr. DENMAN.—I think you are mistaken.

Mr. CAMPBELL.—The record will show.

Mr. DENMAN.—My recollection is that you requested the log and we gave you this, and you made no demand for the [113] bridge log.

Mr. CAMPBELL.—To end the dispute, I will ask the Reporter to produce his notes in the morning and see if I have not asked for the bridge log, and did not expressly say I could not finish my cross-examination of the first officer until that log was produced.

Mr. DENMAN.—You will find you are mistaken according to the record. I am perfectly willing to get it for you.

Mr. CAMPBELL.—I shall ask that the hearing be adjourned until to-morrow so that the log can be furnished.

Q. How much had the "Beaver" changed in her bearing in the interim between the time you first saw her and the time you left the bridge?

A. How much had she changed in her heading from the time I first saw her until the time I left the bridge?

Q. Yes.

A. I would not say how much she had changed her heading; I would say she had changed her bearing. How much I would not say.

Q. How long was it after you left the bridge before you again saw her?

A. Oh, somewhere around probably 12 minutes perhaps, in that neighborhood; I would not say for sure; somewhere around there.

Q. When you saw her the next time did you find her where you expected she would be from what you had seen of her when you left the bridge?

A. When I next saw her I saw her on my starboard bow; I saw her whole starboard side and she appeared to be a little closer than she should have been, but there was plenty of room to pass.

Q. I will again ask you the question. When you saw her the second time was she in the position you expected to find her [114] bearing in mind the position you had last seen her when you left the bridge? A. I have answered that question.

O. Answer it again.

A. She was a little closer.

Q. How much closer?

A. I would say—what do you want, in miles or feet?

Q. Whichever way serves your purpose best?

A. I would say she was closer than I expected to find her.

Q. In your judgment then when you came out of the lavatory you thought she had altered her course?

A. I thought she had.

Q. And swung towards you?

A. It struck me she must have in order to get that close to me. However, when I saw her after I came out of the lavatory I saw her whole starboard

(Deposition of Austin Keegan.) side more than half a mile off.

- Q. That was more than half a mile to starboard to you? A. To the starboard of me.
 - Q. And how far ahead of you?
 - A. Bearing about two points I would safely say.
 - Q. At what distance ahead?
 - A. I just said half a mile or more.
- Q. How far to starboard would you say, half a mile?
 - A. I would roughly guess about that; more.

Mr. DENMAN.—I want to ask counsel what he means by "how far to starboard?"

Mr. CAMPBELL.—My question was understood. The witness does not need to wink to his counsel either.

The WITNESS.—You asked me that question three or four times over and you do not give me a chance to answer the question.

Mr. CAMPBELL.—I will give you all the opportunity you [115] want.

The WITNESS.—I am telling you the truth in this matter and nothing but the truth.

Mr. DENMAN.—What does counsel mean by half a mile to starboard. Do you mean by that half a mile abeam of the vessel or off; I really do not know.

The WITNESS.—I do not know what he means either.

Mr. CAMPBELL.—If counsel makes another suggestion to the witness perhaps the witness will follow up the suggestion again.

The WITNESS.—I want—

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(Deposition of Austin Keegan.)

Mr. DENMAN.—(Intg.) Let him put the question and you answer it.

The WITNESS.—I want to answer that last question this gentleman asked me. How far would she pass me if she had continued on her course. She would have passed me half a mile or probably more had she continued on her course.

Mr. CAMPBELL.—Q. Perhaps a mile?

A. Perhaps nothing; a half a mile or more; I would say; not a mile.

Q. Three quarters of a mile. What would you say about the judgment of your first officer, that she would pass three-quarters of a mile?

Mr. DENMAN.—I object to the question as calling for the opinion of the witness.

A. Perhaps his notion of distance and mine are probably different.

Q. You would not say she would not have passed you three-quarters of a mile distant?

A. I would say she would have passed one-half a mile had she continued on her course. [116]

Q. Why did you say a little while ago she would have passed you one-half a mile or probably a little more?

A. Owing to the fact I cannot judge half a mile; if I wanted to lay off half a mile in San Francisco I would take a tape measure and measure off and drive a stake and I would say one-half a mile.

Q. So in your judgment at the time you came out of the lavatory this vessel was one-half a mile ahead

of you and about half a mile to the starboard of you?

- A. Roughly.
- Q. That is your best judgment, is it not?
- A. Yes, sir, roughly. Don't put down half a mile; I say roughly; in water we do not take a tape-line and measure the distance.
 - Q. You are giving me your best judgment?
 - A. I am.
 - Q. Do you want to change it from one-half a mile?
- A. I do not want to change my statement whatever.

Mr. DENMAN.—I suggest that the captain plot it.

Mr. CAMPBELL.—Q. Did you rush on to the bridge at that time? A. I went on the bridge.

- Q. Why?
- A. Well, just to be on the bridge, that was all.
- Q. Why; what was the necessity of it?
- A. Owing to the fact that our vessel was blowing fog-signals.
 - Q. At that time? A. Yes, sir.
 - Q. Was it foggy then? A. It was.
- Q. What had your vessel been doing with respect to blowing fog-signals while you were in the lavatory? A. Blowing fog-signals.
 - Q. Was it foggy again at that time?
- A. Shortly after I went in the lavatory I heard my fog-signals blowing. [117]
- Q. Could you see from the lavatory whether it was foggy or not? A. I could.
 - Q. And ascertained it was?
 - A. I heard the whistles blowing. The fog had

shut in during the time I was in the lavatory.

- Q. When you came out of the lavatory was it still foggy? A. It was.
- Q. How soon after you came out of the lavatory did the fog lift so you could see the "Beaver"?
 - A. It was so foggy I could not see the "Beaver."
- Q. Where were you when the two blasts were blown between the vessels as approaching signals?
 - A. I was approaching on the bridge.
 - Q. Where is the lavatory, on the poop deck? ?
 - A. On the starboard side on the poop deck.
 - Q. Abaft the cabin? A. Abaft the bridge.
 - Q. Have you a cabin deck besides your main deck?
 - A. No, sir.
 - Q. Where are her houses on deck?
- A. Main deck and poop deck raises above the main deck.
 - Q. Is the poop deck level with the bridge?
 - A. No, sir, it is lower.
- Q. Then you were on a deck lower than the bridge when you were at the lavatory? A. I was; yes.
- Q. You say you heard an answer to your two whistles, you hearing one whistle from the "Beaver"? A. I did.
 - Q. Distinctly?
 - A. I heard the blast of the whistle.
 - Q. You had no difficulty in hearing it?
 - A. None whatever.
- Q. Had you heard any fog-whistles from the "Beaver" while you were in the lavatory?
 - A. None at all. [118]

- Q. Are you familiar with the "Beaver"; are you acquainted with her?
- A. I know her by sight, but I seen the name on her.
 - Q. You would not know her otherwise?
 - A. No, sir.
- Q. How long have you been sailing up and down the coast. A. About 20 years.
- Q. Have you been on the coast in the last four or five years in the trade from the Columbia River south? A. Yes, sir.
- Q. And yet you would not know the "Beaver" by sight unless you saw her name? A. No, sir.
- Q. Do you know either the "Beaver" or "Bear" sight unless you saw her name? A. No, sir.
- Q. They are two of the largest steamers on the coast? A. They are quite large vessels.
- Q. Do you know whether or not they are equipped with automatic fog-horns?
- A. I do not know. I have heard that the "Beaver" was equipped with an automatic fogwhistle.
- Q. Did you run to the bridge or walk to the bridge after you left the lavatory?
 - A. I went on the bridge.
 - Q. Did you run or walk?
- A. You have to climb the steps, you know and when you get up, I do not know whether you call it running or walking, but I got there.
 - Q. Were you in haste to get on the bridge?

- A. No great particular haste: no.
- Q. It was not until after you got on the bridge that you saw the "Beaver" alter her course as you have described it?
- A. I have not said that the "Beaver," or anything about the altering of the "Beaver's" course, as far as I know.
- Q. I thought you testified a little while ago that the "Beaver" altered her course sharply across your bow?
 - A. That [119] was after I got on the bridge.
 - Q. That is it?
 - A. I told you that some little time ago.
 - Q. I do not recall?
 - A. You must have it down there.
- Q. There can be no mistake about that, you did not see her alter the course until you got on the bridge?
- A. I told you distinctly I saw the "Beaver's" starboard side.
- Q. Were you on the deck or not at the time you saw the "Beaver" alter her course?
- A. I was approaching the bridge when Mr. Beckwith blew the two blasts to her.
- Q. Where were you when you saw the "Beaver" alter her course?
- A. I was on the bridge at the time she pulled herself across our bow, and then gave me one blast.
- Q. Did she alter her course before or after she gave you the one blast?

- A. She altered her course about the time she gave me the one blast.
- Q. Then you were on the bridge at the time you heard the one blast? A. I certainly was, yes.
- Q. Where were you at the time that the two blasts were given by your chief officer?
 - A. Approaching the bridge.
- Q. Do you know whether or not he had given his order to the helmsman to starboard his helm before or after the two blasts?
 - A. On our vessel. I heard him give the order.
 - Q. Was that before or after the two blasts?
- A. About the time he gave the two blasts; about that time.
 - Q. Where were you then?
 - A. Approaching the bridge.
 - Q. How far distant from the bridge?
- A. Two or three feet, I suppose; I did not measure the distance.
 - Q. Was that order obeyed by the helmsman?
 - A. I presume it was. [120]
 - Q. You knew it was, didn't you?
 - A. I could not see the helmsman.
- Q. You could tell by the movement of your vessel, could you not? A. No, sir.
 - Q. You could not tell? A. No, sir.
- Q. How soon after you reached the bridge did you give the order to hard aport?
- A. I gave the order hard aport when the "Beaver" gave me one blast of his whistle.

Q. How soon was that after the mate had given his order to starboard the helm; you say about 10 seconds?

A. Well, I could not say within seconds; probably some seconds might have elapsed, I would not say—a few seconds.

- Q. And you did not give your order to port your helm until after?

 A. Until he blew one blast?
 - Q. Yes. A. Yes, sir.
- Q. And you gave your order to port your helm about the time that the "Beaver" altered her course, did you not? I was not on the "Beaver."
 - Q. You could see, could you not?

A. I could not tell what time he gave his order to alter his course.

Q. I say you gave the order to port your helm about the time the "Beaver" altered her course?

A. I could not say.

Q. Why not?

A. I do not know when the "Beaver" altered her course.

Q. Could you not see?

A. I was not on the "Beaver."

Q. Could you not see the "Beaver" and tell when she altered her course?

A. I could see the "Beaver."

Q. Could you tell when she altered her course?

A. That is pretty hard to say. One blast changed his course. [121]

Q. Was that when he started to change his course?

- A. It appeared to be in that neighborhood.
- Q. So that you ordered your helm hard aport when he gave you one blast which was practically the same time that he started to change his course?
- A. When he gave the one blast and changed his course I backed my ship full speed astern and gave him three blasts.
 - Q. Is that what I asked you?
 - A. No, sir, it is not, but you asked it before.
- Q. Go back again. Did you alter your helm to port before you saw a change of course on the "Beaver"? A. No, sir.
- Q. Then you ordered your helm to port at the time you saw the "Beaver" starting to swing to starboard, did you not?
- A. I ordered my helm aport when he gave me the one blast.
- Q. Was he already swinging when he gave you the one blast, or did he appear to be swinging at that moment?
- A. He appeared to be swinging at that moment, when he answered my whistles. In other words, when he cross-signalled me.
- Q. Had you heard any whistle from the "Beaver" up to that time? A. None at all.
- Q. Had you thought it strange she was not sounding her fog-whistle? A. I thought so, yes.
- Q. Did you make any comment on that to anybody? A. I did.
 - Q. To whom?
 - A. When the collision occurred—

- Q. (Intg.) At what time. When did you make any particular comment that the "Beaver" was not blowing her fog-whistle?

 A. What time?
 - Q. When did you?
- A. When I came on the bridge I said to the first mate, "Damn funny he don't blow his fog-whistle." [122]
- Q. You expected him to blow his fog-whistle although in sight of your vessel? A. Yes, sir.
 - Q. Were you blowing your fog-whistle?
 - A. We certainly were.
- Q. Did you notice how far your vessel swung on your hard astarboard helm the mate had given her?
- A. She did not have time to swing more than, I would say, half a point or so.
- Q. How long would it take to swing half a point in that size vessel?
- A. Probably, maybe 15 seconds or somewhere in that neighborhood; I would not say for sure; the conditions of weather and so forth.
- Q. How soon did the collision take place after you reached the bridge?
 - A. Probably something over two minutes.
 - Q. Probably something over two minutes?
 - A. Yes, sir.
- Q. Was your vessel going astern three or four knots an hour at the time of the collision?
 - A. She was going astern.
 - Q. Is that a fair answer to my question, Captain?
 - A. It is.
 - Q. She was going astern three or four knots an

hour? A. She was going astern.

- Q. Was she going astern three or four knots an hour? A. I would not say.
 - Q. You do not know?
 - A. I would not say how fast she was going astern.
 - Q. Is that because you do not know?
- A. Not because I do not know, because I have not experimented with the ship.
- Q. What is your judgment about it, as to whether or not she was going three or four knots an hour astern?
- A. At that particular time I would say she was going astern— [123] I could not give you the speed astern; she was going astern.
- Q. She did not have any appreciable stern way that you could see? A. She had.
 - Q. She had appreciable sternway?
- A. Yes, sir. We had no means of knowing she was going astern.
- Q. What was the speed astern at the time of the collision? A. That I cannot say.
 - Q. Is it because you cannot, or you do not want to?
 - A. I would not say.
- Q. In your judgment the collision took place in about two minutes after you reached the bridge?
- A. A little over two minutes; something over two minutes.
- Q. How long a time elapsed between your two whistle signal and the one whistle you say you received from the "Beaver"?

A. Oh, some few seconds; a short interval; I would not say.

Q. Is there any way, captain, you can account for a master of a passenger ship 450 feet in length in weather so clear that you can observe at least a distance of half a mile changing his course so as to cut sharply across you bow, when he was proceeding on a course which would pass you one-half a mile distant? A. For whom do you say?

Q. Read the question, Mr. Reporter.

(The Reporter reads the question.)

A. A master you said?

Q. Yes.

A. I do not think that any sensible man going to sea would have done what was done on the "Beaver."

Q. Is that your answer?

A. I don't think the master of the vessel was on his course.

Q. Do you know anything about him?

A. I don't know him on the street. [124]

Q. Is there any reason you can give for the navigating officer of a large passenger ship altering his course so as to cross the bow of another vessel when he is proceeding on a clear day so as to pass one-half a mile distant?

A. I cannot give any reason why he should do such a thing, the master, or mate, or any other man that holds a license.

Q. It would be a most extraordinary occurrence?

A. It would; I would not say extraordinary, I have seen them do a great many funny things. I

(Deposition of Austin Keegan.) consider it a foolish thing to do.

Q. Have you ever sailed in a vessel of the type or size of the "Beaver"?

A. I have never sailed on a passenger vessel of her size, but I have sailed on some other large vessels carrying freight.

Q. Have you ever sailed on vessels up and down the coast of the size of the "Beaver"? A. No, sir.

Q. Have you ever been an officer on a vessel of the size of the "Beaver"?

A. Not a passenger carrier.

Q. You know it to be a fact that those large vessels hold their courses as close as they can?

A. I do not know they do.

Q. Has not that been your experience that those large vessels do?

A. I cannot say owing to the fact I have not been in the "Beaver."

Q. From your experience don't they adhere to their courses as much as possible?

A. I cannot say.

Q. Have you ever made any observation?

A. I comply with the rules regardless of the size of ships.

Q. Have you ever made any observation as to whether those large vessels adhere to their courses?

A. I have nothing to do with them, the sea is clear to all regardless of the size of [125] the ship. The size of the vessel cuts no ice. My license covers as big a ship as the "Beaver" and a great deal larger. What they do and what they don't do, I do not care. I comply with the rules of the road.

- Q. Were you on the bridge when the lookout was ordered back to the forecastle-head?
- A. I don't know that the man left the forecastlehead.
- Q. You mean to tell me you did not see the statement that was filed by your chief officer with the United States Inspectors detailing the circumstances of the collision?
- A. I saw no statement that the first officer filed whatever. Furthermore I will tell you I am at outs with the first officer and I do not want to see his statement.
 - Q. Why are you at outs with him?
 - A. Just on general principles.
 - Q. Arising out of this collision?
 - A. No; nothing whatever to do with the collision.
- Q. You have not very much confidence with the first officer?
- A. I have every confidence in him, a first-class man.
- Q. You would not doubt his statement he made to the inspectors?
 - A. I would not doubt his statement at all.
 - Q. Made to the inspectors?
- A. I do not know what his statement is; his statement to the inspectors was aside from mine.
- Q. In your statement to the inspectors you did not go into the circumstances of the collision at all?
 - A. I gave the cause.
- Q. Did you give the circumstances that led up to the collision?

A. I gave the cause of the collision.

Mr. CAMPBELL.—I offer in evidence the statement of the [126] master.

(The paper is marked "Libelant's Exhibit 3," and is as follows:)

Libelant's Exhibit No. 3—Statement of Austin Keegan, Master of S. S. "Necanicum."

"Steamer 'Necanicum,' San Francisco, Oct. 31, 1913.

U.S. Inspectors,

Steamboat Inspection Service, San Francisco, Calif.

Gentlemen:

I report as follows: At 2.18 P. M. the 30th inst. when 45 miles northward of Pt. Reyes on her way to Humboldt Bay, the S. S. 'Necanicum' collided with the S. S. 'Beaver.' The weather was foggy at the time. The 'Necanicum' had her stem damaged and her tiller bent.

The collision was due to the fact that the 'Beaver' was not sounding her fog signal and also that when both vessels were in sight and hearing of each other the 'Beaver' cross signaled the 'Necanicum.'

Respectfully yours,

AUSTIN KEEGAN,
Master S. S. 'Necanicum.' "

The WITNESS.—Mr. Beckwith's statement was independent of mine altogether.

Mr. CAMPBELL.—Q. Didn't he tell you he ordered the lookout back to the forecastle-head after you had first seen the "Beaver"?

A. My answer to that will be this: I saw the lookout on the forecastle-head when I came on the bridge; he was standing there.

Q. Did the chief officer tell you he had ordered the lookout back to the forecastle-head after he had first seen the "Beaver"? [127]

A. I seen the lookout on the forecastle-head when I came on the bridge.

Q. Answer my question.

A. When was this? What are you asking me?

Q. Read the question.

(The Reporter reads the question.)

A. What are you asking me. He had first seen the "Beaver" in clear weather.

Q. At any time did the chief officer of your vessel, Mr. Beckwith, tell you he had ordered the lookout back to the forecastle-head at a time subsequent to when he first saw the "Beaver"?

A. Yes, sir, I think he told me that sometime, I would not say; yes, he told me that.

Q. Then you knew from that statement that he had pulled him off the forecastle-head?

A. I know the man was on the lookout when I came on the bridge.

Q. You knew then that he had been pulled off?

A. I do not know that he had. When I left the bridge he was on the lookout and when I came back on the bridge he was still there; whether he had been taken off in the meantime I would not say. I would not swear to that. I know he was on the lookout when I left the bridge, when the fog cleared up.

What he had done in the interval before the fog set in I do not know; that is, the lookout. I know he was on the lookout when I came back on the bridge. And now that I think of it—let me see, he was on the lookout, of course he was. He was on the lookout for some time.

- Q. What did you say would be the course that the bow of your steamer would take when you reversed at full speed astern under [128] a hard aport helm where that helm had been ordered from a hard astarboard helm?
- A. She had headway. What do you mean, after the engines were reversed?
- Q. Read the question, Mr. Reporter. (The Reporter reads the question.) If your vessel was proceeding under a starboard helm and you suddenly reversed her full speed astern with your helm hard aport, what would be the course that your vessel would swing to?
- A. Well, she would continue as she headed at the time the engines were reversed.
- Q. That is to say, she would continue to swing to port if she had a starboard helm?
- A. She would continue as she headed at the time the engines were reversed for probably two or three seconds and then her bow would swing to starboard, to the right.
- Q. Would her bow swing to starboard before she gained sternway? A. It would.
 - Q. Has that been your experience?
 - A. It would a little.

- Q. What do you mean by a little?
- A. Well, a little is a little.
- Q. When would she swing this little, just before she gained sternway?
- A. Why, certainly before she gained sternway; yes.
- Q. How long would she continue to swing to port if she was under a starboard helm at the time you reversed her?
- A. I just stated that she would stay as she headed for a little while and then she would begin to swing to starboard.
- Q. If she was under a starboard helm she would continue swinging to port for a time then?
- Mr. DENMAN.—He said continue as she was headed, not as she was swinging. [129]
- A. She might probably a quarter of a point; somewhere like that.
- Q. If she was swinging to port at the time under a starboard helm she would continue to swing to port for an appreciable time?
 - A. She would for a couple of seconds.
 - Q. Is that all?
 - A. She would for a short interval.
- Q. Have you ever experienced with that steamer to see how quick you could stop her? A. I have.
 - Q. How long did it take you?
- A. It took one minute and 15 seconds to stop her headway and I tried it here in San Francisco Bay at full speed ahead and then I gave full speed astern

(Deposition of Austin Keegan.) with everything popping and she had sternway for 45 seconds.

Q. Within 45 seconds?

A. Her headway had stopped in one minute and 15 seconds and the other 45 seconds she was going astern. It took one minute and 15 seconds in smooth weather in this bay going about eight miles an hour.

- Q. That is her full speed?
- A. Full speed ahead to full speed astern.
- Q. That is about the full speed of that vessel, eight miles?
- A. That is her limit, unless you set sail on her and drove her before a heavy northwest, and then you might get eight and a half out of her.
- Q. Captain, from the time you passed Point Reyes up to the time you first sighted the "Beaver" had you had fog all the time?
 - A. More or less, yes; banks of fog.
- Q. You maintained the same speed right along during that period?
 - A. Not when the fog was thick.
- Q. Why don't your log show the reduction of speed? [130]
 - A. Well, we have standing orders on the vessel—
- Q. This is simply then a presumption on your part or an assumption from your standing orders?
- A. My standing orders are always carried out on a vessel strictly.
- Q. How did you know they were carried out on this morning? A. I know that they were.
 - Q. How?

A. Prior to the time of the collision I had stopped the vessel at different times.

Q. For what purpose?

A. To ascertain the position of some other approaching vessel.

Q. What other vessel?

A. We did not see them in the fog.

Q. Don't you know in the fog when you pass vessels? A. No, sir, we do not know.

Q. How many vessels did you pass that morning?

A. I could not say.

Q. Have you any recollection at all?

A. I would say several.

Q. Why, don't you note in your log when you stop for passing vessels?

A. Well, we just stop the engine—I presume the engineer's log will show that.

Q. Why, don't you show it on your log when you stop your engines for fog whistles?

A. It is not customary.

Q. Don't you ever do it?

A. It is not customary.

Q. I am asking you if you don't ever do it.

A. If I was on a fast running vessel I would; on a slow vessel like mine I do not because we do not go too fast at any time. My vessel is a very slow vessel, the slowest on the coast. To continue answering your question I will say how I know that the steam was reduced is when I had stopped the vessel she did not pop; in other words, she did not not blow off any steam, whereas if she was going along at full

speed with the steam [131] turned on if I stopped her immediately she would pop right away; that is, her safety valve would work.

- Q. Do you know the size of her boiler?
- A. Of the "Necanicum"?
- Q. Yes. A. Of the boiler?
- Q. Yes.
- A. Yes, sir; it is 4 by 4 diameter square piece of iron, and probably about six feet long, I would say.
 - Q. Did you ever measure it to see if it is 4 by 4?
 - A. I had a new boiler put in.
 - Q. Did you ever measure the old boiler?
 - A. The boiler was 4 by 4 in the rudder head.
- Q. That is where it passes through the rudder stock? A. Yes, sir.
 - Q. What is it outside of that?
 - A. Outside of that it is 5 by 5, I think.
 - Q. Did you ever measure it?
 - A. I had it made to order.
 - Q. Did you ever measure it?
 - A. Yes, sir. You mean the boiler?
 - Q. You know what I mean.
- A. It is around 5 by 5 solid iron, just back of the round of the rudder-head. The part that goes through the rudder is 4 by 4, and there is a shoulder that goes against that that is 5 by 5, and then it runs back; the leverage tapers to a point where the shoes connect probably about 5 feet, somewhere in that neighborhood. I did not measure that, but I do know the diameter.

Mr. CAMPBELL.—That is all except I would like

to have the examination continued over until 10 o'clock in the morning, until the bridge log is produced.

Redirect Examination.

Mr. DENMAN.—Q. Captain, I wish you would take a sheet of [132] paper and draw the relative positions of the two vessels when you saw the "Beaver" two points or more on your starboard bow when you came out of the toilet. A. All right.

Q. Just take that sheet there if you will. I will get you a pair of parallels.

The WITNESS.—We cannot get distances on this; we could on a chart with dividers and parallels. It will give it to you. What is it you wish?

Mr. DENMAN.—Q. I wish you would draw—take some position on there as your position on the ocean roughly, approximately at the time you came out of the toilet.

A. We were heading northwest half west, that is our course at the time.

Q. Mark that line that you have just drawn A-B. Mark it A here and B here. A. Yes, sir.

Q. Now, that line is the course that you were on at the time? A. Yes, sir.

Mr. CAMPBELL.—Q. That is, it is a line drawn parallel to the course that you were on?

A. It is the course.

Q. You were not that far offshore?

A. It is a parallel line to the course that we were steering. This chart is not a new chart.

- Q. I want to show the relative positions of the two vessels?
 - A. There is our course (indicating).
- Mr. DENMAN.—Q. Mark on that course a position for your vessel.

 A. Any position will do.
 - Q. Any position will do. Put down there A.
 - A. This is my ship. (Indicating.)
- Q. When you came out of your room you say you saw the other vessel two points on your starboard bow? [133]
 - A. Yes, sir.
 - Q. Mark her. A. Yes, sir (marking).
- Q. Would you draw that line through your bow, or that far forward, Captain. Take it from the bow of your vessel? A. Yes, sir.
- Q. Have you measured that carefully; is that two points?
- A. Northwest half west is this. That is parallel.
- Q. Now, Captain, take a point on the exact bow of your vessel. I want you to measure off the distance of a half mile on the dividers? A. Yes, sir.
- Q. Multiply your exhibit by 10 times and get me a five mile distance on your dividers.
 - A. A five mile distance on this chart? Q. Yes.
 - A. Yes, sir.
 - Q. Mark it on this line. A. Yes, sir.
 - Q. Mark that the spot C. A. Yes, sir.
- Q. That spot which we will call half a mile from the "Necanicum" enlarging the scale for this purpose 10 times. A. Yes, sir.
 - Q. Mark the line two points starboard of the line

A—B as the line X—Y. A. Yes, sir.

- Q. X—Y then represents the line of position from 'the bow of your boat to the "Beaver" and the point C is a point one-half a mile distant, drawing the scale as 10 times larger. As I understand it, Captain, you say that when you saw the "Beaver" two points on your starboard bow you presumed that she was on the same course that you were on as you could then see her starboard side. Is that correct?
 - A. That is correct. [134]
- Q. Will you pass a line through the point C parallel to the line B—C?
 - A. That line is already there.
- Q. Pass a line through C which will mark the course of the "Beaver"? A. Yes, sir.
- Q. Now, I ask you what distance from the course of the "Necanicum" the course of the "Beaver" is on that scale. We will mark the bow of the "Necanicum."
 - A. I will have to go home and look up my algebra.
- Q. You don't need your algebra. Mark the bow of the "Necanicum" N. A. Yes, sir.
- Q. Take your dividers and measure the distance between the line T—Q and the line B—C.
- A. On this chart?
 - Q. Yes. What is the distance?
 - A. It shows two knots.
- Q. Dividing it by 10 it will be two-tenths or onefifth knot, won't it? A. Yes, sir.
- Q. So that the distance from the bow of your vessel to the point C where you first saw the "Beaver"

is less than one-half and the distance between the course of the "Beaver" T—Q and the course of the "Necanicum" B—C. That is correct, it is not? That is correct on the chart there, is it not?

- A. I would not say.
- Q. Measure it and see.
- A. I would not do it that way.
- Q. You have got to follow my mind.
- A. I cannot say you are right when I do not know.
- Q. I am not asking you to. Just follow this.
- A. Yes, sir, I have taken your word for it.
- Q. Is not the line N—C a distance of more than two and a half times the distance between the courses of the vessels? A. It is. [135]
- Q. Now, if the vessel is two points on your bow when she is half a mile away—
 - A. (Intg.) Or more.
- Q. If she is two points on your bow and half a mile away and continues on that course, on the same course, you are on parallel courses how far will the vessels be apart when they pass one another. Will they be just as far apart as they were distant in the beginning? A. On parallel courses?
 - Q. Yes.
 - A. They would not; they will be closer to.
- Q. You do not mean to say, do you, that when you see her one-half a mile distant two points on your bow that she will be half a mile distant when she was abeam to you?
- Mr. CAMPBELL.—Objected to as leading and cross-examination of his own witness.

A. I have not said she was.

Mr. DENMAN.—Q. I understood you to say that.

A. All I say is that she had ample room to pass had she continued on her course.

Q. You did say in answer to a question by Mr. Campbell that you saw her one-half a mile distant two points or your starboard bow and then you said afterwards to him that she would pass you half a mile and over on your starboard side from that position on a parallel course. I want to ask you—

A. (Intg.) I never said she would pass me half a mile when she passed me abeam.

Mr. CAMPBELL.—We object to counsel's cross-examination of his own witness. The witness plainly testified as to what his recollection was at that time.

The WITNESS.—I did not say she would pass me half a mile. I said when she was two points she was half a mile or [136] more distant; how much more I would not say. I never did state she passed me half a mile.

Mr. DENMAN.—Q. My impression is the record will show you made such an answer. I would like to know what your opinion was in regard to the distance she would pass you from the position you last saw her as you stepped out of the toilet.

A. I would say she would have passed a good safe distance.

Q. Would it be such a distance as is represented on the chart which we put in here?

A. It should be at least had she continued, she would have passed me at a good safe distance.

Q. On the inside?

A. Inside of me. I don't remember having stated at any time the vessel passed me half a mile inside of me when she was abeam of me.

Mr. DENMAN.—I offer this in evidence as Claimant's Exhibit 1.

- (The chart is marked "Claimant's Exhibit 1.")
- Q. This popping you referred to is that customary on vessels on this type when they are under full steam?
 - A. Yes, sir; it is the slow speed vessels.
- Q. With your vessel bearing as she was bearing that day, can you see across the bow of your vessel from the bridge? A. I could from the bridge.
 - Q. It was only from this deck?
- A. I could not see from the lavatory door; I could not see ahead nor could I see on the port bow, but I could see anything that was well to the starboard of us.
- Q. Now, Captain, you have given various estimates of time as to what occurred when you came on deck; do you mean to [137] say those estimates are definite as to seconds?
- A. I would not want to say they are; I was not taking time.
- Q. Have you had experience in attempting to check up the time with the actual facts?
- A. If I was running a vessel from one familiar point to another and trying to make it in thick weather, running from one place to another and knew the speed of the vessel I might time her. In

this case I did not have any watch in my hand.

- Q. Is there any difference in the line of the "Beaver" and the "Bear"?
- A. I know nothing about either vessel, other than they are large vessels. I do not even know their tonnage. All vessels are alike; the rules of the road do not say what size the vessels shall be or anything telse.
- Q. What style of steering gear have you on your vessel, hand or steam? A. Hand gear.
- Q. And about how long does it take you to put the vessel over? A. To get the wheel over?
 - Q. Yes.
- A. About 18 or 20 seconds I should judge; 20 seconds, perhaps. It depends on who is at the wheel.
- Q. On cross-examination Mr. Campbell asked you whether or not the order was starboard or hard astarboard that the mate gave. Do you recall which it was?
- A. I heard him give an order, but I would not say which he gave.

Mr. DENMAN.—That is all.

Recross-examination.

Mr. CAMPBELL.—Q. What did you mean by stating to me as my recollection is that you did, that when you first saw the "Beaver" you then judged her to be on such a course that she would pass you about a mile to starboard?

- A. I figured she would pass me a mile to starboard.
 - Q. That is what you did figure on?

- A. Yes, sir.
- Q. The distance between your vessel and the "Beaver" at the time they would pass each other would be a mile?
- A. Because she was five or more miles, not in my opinion.
 - Q. And a point on your starboard bow?
- A. And a point on my starboard bow.
- Q. Is it not a fact that when you first saw her after you came out of the lavatory that you thought at that time that she was in such a position that she would, if she held her course pass you about half a mile distant?
- A. No, sir; I stated that I saw her about two points, in that neighborhood, on the starboard bow, and I saw the whole starboard side of the "Beaver," and I figured that if she carried on as she was going, kept her course, she would pass well clear of us. I did not state at any time how far she would pass us.
- Q. You said to me on direct examination in answer to my question she would pass you about half a mile? A. When she was abeam?
 - Q. Yes. A. See if you can find that.
- Q. And you said she would pass perhaps a little more. A. I do not think so.
- Q. Had she changed her course in the five minutes which elapsed between the time you first saw the "Beaver" and the time you left the bridge?
- . A. I would not say five minutes or not. If she did, I don't know; I was not on the "Beaver."
- Q. Could you not see her?

A. I saw her swing at the time she gave the one blast.

Q. Was that in answer to the different changes we are inquiring about?

A. How would I know; I left the bridge. [139]

Q. In the five minutes that you were on the bridge from the time you first saw her and up to the time that you went to the lavatory—in the interval between the time you first saw her and the time at which you left the bridge, you say was about five minutes? A. In that neighborhood; yes.

Q. Had the "Beaver" altered her course from what she was pursuing when you first saw her?

A. She had not to my knowledge.

Q. You saw her, did you not, you kept your eye on her?

A. I saw her plainly for somewhere in the neighborhood of five minutes; I would not say how long. At that time I saw her starboard side, and she was continuing on her course, as far as I know.

Q. At that time she was on such a course that would take her a mile to your starboard?

A. Yes, sir.

Q. When you came out of the lavatory you said she had changed her course somewhat, so as to bear in closer to you?

A. Yes, sir; she must have; she was closer than I expected she would be.

Q. At that time you said that you thought she would pass you one-half a mile to your starboard. Why do you change your testimony?

A. I say I saw her after coming out of the lavatory two points, in that neighborhood; she was well on our starboard bow, and I saw her whole starboard bow. I have not at any time said she would pass me one-half a mile inside of me. I do not know really how far. I saw this vessel two points on my starboard bow. I saw the whole starboard side of that ship. Had she proceeded on that course as she was doing at the time I came out of the lavatory there would have [140] been no collision.

Q. How do you reconcile your statement that she would not have passed half a mile to your starboard with the statement of your chief officer who has testified she would have passed three-quarters of a mile?

A. I do not know about any testimony he gave. Mr. DENMAN.—Objected to on the ground it calls for the conclusion of the witness.

A. (Contg.) She must have hauled out; she must have changed her course from the first time I saw her.

Q. Do you mean the "Beaver"? A. Yes, sir. Mr. CAMPBELL.—Q. And borne in towards you?

A. Yes, sir; she certainly must have, or she could not have gone so close.

Q. How far would you say now after you had made this drawing the "Beaver" would have passed you?

A. When I first saw her she should have passed us about a mile; when I saw her after coming out of the lavatory she should have passed us a good safe distance.

Q. What is that? A. A good safe distance.

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(Deposition of Austin Keegan.)

- Q. What is that?
- A. Any distance but well clear of each other.
- Q. What is your judgment of the distance she would have passed your starboard when you came out of the toilet? A. I cannot say.
 - Q. What is your judgment?
 - A. A good safe distance.
- Q. What do you call a good safe distance?
- A. Where there is room for two bad steering vessels to pass each other.
 - Q. Was your vessel of that type?
 - A. My vessel steers well.
- Q. What was the distance in feet that you would say she would have passed you?
 - A. I cannot answer that. [141]
 - Q. You cannot or you don't want to?
 - A. I refuse to answer that.

Mr. DENMAN.—I don't think there is any need for that suggestion. Go on and answer it.

- A. No, sir, I am not going to answer such questions as that.
- Q. Why not? A. What is the sense of it?
 - Q. He has a right to have his question answered.
- A. That is all right. If I put it in half miles or feet I would have to say something—I would have to go down and figure it.
- Q. The reason you do not want to answer it is you have not figured it?
 - A. I have not the material at hand to.
- Mr. CAMPBELL.—Q. Until you laid it down on the chart here and was checked up by your own

counsel, you still had in mind she would have passed you half a mile? A. I never said that.

Q. Up to the time you took hold of the chart you still had in mind she would pass you one-half a mile to your starboard?

A. I never said she would pass one-half a mile abeam of me.

Mr. DENMAN.—I think the witness has a right to go back and see.

The WITNESS.—I do not care about that. It has nothing to do with me. I am telling the truth.

Mr. DENMAN.—That is all going into the record.

Mr. CAMPBELL.—Mr. Reporter, will you turn back to that part of the witness' testimony and read it.

(Thereupon the Reporter reads the testimony.)

Mr. CAMPBELL.—Q. Why were you discharged by the Hammond Lumber Company, on account of this collision? A. No, sir. [142]

Q. Why did you state you were discharged?

A. I was in a sense, and in another sense I was not; I had a row with Mr. Hammond.

Q. Were you on the "Necanicum" after this collision? A. I was for some little time.

Q. Were you discharged on account of this collision?

A. No, sir; the collision was not referred to whatever. I had a row with Mr. Hammond, just the same as I might have a row with anybody.

Mr. CAMPBELL.—That is all.

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(Deposition of Austin Keegan.)

Further Redirect Examination.

Mr. DENMAN.—Q. At Mr. Campbell's request there was read to you your testimony given to him in regard to the position of the two vessels as you saw them when you came out of the lavatory, and from that testimony it appears that you stated that you thought from the position of the vessel as you saw her when you first looked out after leaving the lavatory that she would pass you half a mile on your starboard side? A. I did make that statement.

Q. I will ask you whether or not that is correct.

A. When I came out of the lavatory if she continued on her course, she should have passed me roughly half a mile.

Q. How could she do that two points on your starboard bow?

Mr. CAMPBELL.—Objected to as being cross-examination of his own witness.

A. When I came out of the lavatory, that is just a rough guess; judging her appearance when I came out of the lavatory she was going full speed at the time; she might have passed in that neighborhood, it might be less, and it might be more; at any rate she had plenty of room to pass if she continued on [143] her course; that is my statement from beginning to end.

Q. And you say your impression as to half a mile cannot be true as an exact figure?

Mr. CAMPBELL.—Objected to as not proper redirect examination; it is cross-examination and a leading question.

A. As to what exact figure?

Mr. DENMAN.—Q. As to half a mile being the distance—

- A. (Intg.) By direct bearing from my vessel?
- Q. Bearing two points as you looked at her and saw her two points on your starboard bow.
- A. I said two points or more on my starboard bow; somewhere in that neighborhood. When I came out of the lavatory the vessel should have passed well clear of us had she continued on her course. That is the shortest way to put it. When I first saw the vessel she was five or six miles off, somewhere in that neighborhood. Then, bringing it up again when I first saw her, it confused me. When I first saw the vessel she was five or six miles off, which I stated here at different times, and then you again bring it up when I first saw her. All you want is the truth, isn't it?
- Q. Yes. When you first saw her, in your judgment she was going to pass you a mile off?
- A. Yes, sir. She should have passed us a mile off. She was bearing a point on our bow, and should have passed one mile off. When I next saw the vessel if she had gone on about her business she would have passed us well clear. I would not say how many feet. I might go back over the course and take my tape measure and measure it off.
- Q. Could you tell the exact course the other vessel was on? A. I was not on the other vessel. [144]
- Q. Could you tell the exact course of the other vessel?

A. When you see the other vessel's whole starboard side you know she is going clear of you.

Q. Could you tell the course within 10, 15 or 20 degrees?

A. You could tell she is coming down the coast.

Q. Can you tell anything more looking at a vessel across the bow?

A. Well, vessels coming down the coast, some swing two points. I have been mate in one of those that grind away steam. The "Beaver" is not that class of vessel.

Mr. DENMAN.—That is all.

Further Recross-examination.

Mr. CAMPBELL.—Q. She may have been as much as three points on your starboard bow when you first came out of the lavatory?

A. She might have been; I did not take a bearing. Owing to the fact that I saw her whole starboard side and she appeared to be going well clear. I thought she was safe and if she continued to go on her course she was safe.

Q. And you would not say she was not four points?

A. It was in the neighborhood of two points.

Q. She might have been four points?

A. You might ask me, it might have been 20 points. I am saying roughly in that neighborhood. I saw her whole starboard side and she was far enough away from us to go clear of us; a long ways off, that is what I consider for passing a boat, and ample room to pass inside of us.

Mr. DENMAN.—That is all.

Mr. CAMPBELL.—That is all until I have a chance to see that bridge log.

The WITNESS.—The bridge log is the same as you have [145] there, as far as I know.

Mr. CAMPBELL.—I want the record to show I have not consented to the conclusion of the testimony of the captain until the bridge log is produced.

Mr. DENMAN.—The record speaks for itself. I will endeavor to produce the bridge log if I can find it. I have never seen it myself. I have a copy of it, and the copy is the same as the log book.

(An adjournment is here taken until to-morrow, Tuesday, May 12th, 1914, at 10 o'clock A. M.) [146]

Tuesday, May 12th, 1914.

Mr. DENMAN.—I have inquired at the office of the Hammond Lumber Company for the bridge log and they say they have not had it there. I have not seen it myself, and I presume it must be on the ship, which will be in port in the course of a few days, but I suggest that counsel examine the witness on this log so that in the event they are unable to find the other log there will be no loss of time, or if it appears that the other log is identical with this—

Mr. CAMPBELL.—(Intg.) I do not care to examine the witness respecting this log. It is the bridge log that I am interested in seeing.

Mr. DENMAN.—The point I am making is this: in the event that the bridge log proves to be identical with this the necessity for an examination of the captain on it will be unnecessary. There will be no necessity for calling him.

- Q. Did you have anything to do with the bridge log, Captain?
 - A. No, sir, I very seldom made an entry in it.
- Q. Did you make any entry in this bridge log other than the one correcting the depth of water which you got off Point Reyes?
- A. I made no entry myself. I took the sounding and I told the second mate 37 fathoms, but he must have misunderstood me and put down 27 in place of 37. I noticed that afterwards.
- Q. Did you make any entry in that log concerning the collision?
- A. No, sir, not myself. I very seldom make an entry, only when I take soundings, I sometimes put down the soundings; sometimes through the night I once in a while mark them down myself, but not as a rule.
- Q. Captain, yesterday in response to an inquiry from Mr. [147] Campbell you stated that you had left the employ of the Hammond Lumber Company?
 - A. Yes, sir.
 - Q. When was that about?
 - A. Somewhere in the latter part of April.
 - Q. Of this year?
- A. Yes, sir. I have a little book; I guess it is in my other clothes; the date would be in it.
 - Q. It is within the last month, or month and a half?
 - A. A little more, I think.
 - Q. Amounting to as much as two months?
- A. No, not two months yet. I think it was somewhere in the latter part of April, or March rather.

- Q. Also yesterday in answer to an inquiry of Mr. Campbell you stated that your vessel when reversing after going ahead and before she had lost her headway would turn to your starboard as she went through the water? A. Yes, sir.
- Q. But you did not state how much she would turn before she lost her headway, and I would like to know how much in your opinion she would turn?
- A. Oh, she would swing probably about three points or somewhere around there, a rough guess, to starboard.
- Q. That would be a course curving towards the starboard away from the port away across?
 - A. Yes, sir.
 - Q. She might otherwise have? A. Yes, sir.

Mr. DENMAN.—That is all.

Cross-examination.

- Mr. CAMPBELL.—Q. Then I understand your statement to be that at the time your vessel actually began to move astern, if she did so, she had swung about three points to starboard of what her course had been at the time you started to reverse?
- A. Somewhere in that neighborhood she would. [148]
- Q. And would she continue to swing to starboard while she was gaining sternway? A. Yes, sir.
- Q. How many points had she swung to starboard at the time of the collision?
- A. Perhaps, maybe about four points, somewhere in that neighborhood; three or four points; I would not say exactly.

- Q. You already have three points before she gains sternway at all, and you testified yesterday that you had sternway for how long, three-quarters of a minute?

 A. Somewhere in that neighborhood.
- Q. Would she not turn quicker to starboard when she was under sternway than when she was simply backing and before she gained sternway?
- A. When you back them with a right-hand screw the stern swings to port and the bow comes to starboard.
- Q. The more sternway she gets the faster she will swing? A. Yes, sir; she will faster, I presume.
- Q. Then, in your judgment, if she was backing, if she had sternway for three-quarters of a minute would she not swing more than a point further to starboard in three-quarters of a minute?
- A. In the first place—let me think a bit. She was backing for two minutes or more, and in that length of time why I would figure that she would swing probably about three or four points in about two minutes backing; about that I would say.
 - Q. Would she go as high as five points?
- A. Well, I could not say exactly, you know; I could not say exactly.
- Q. Did you look at the compass at all to see what she responds?
- A. I looked at the compass when the ship struck. [149]
 - Q. What was she heading then?
 - A. North northwest.
 - Q. North northwest? A. Yes, sir.

Mr. CAMPBELL.—I would like to have the present log marked for identification, and then I want to see the bridge log when the steamer arrives.

The WITNESS.—She left here yesterday, I think.
Mr. CAMPBELL.—Q. You are not on board any
vessel at the present time?

A. No, sir.

- Q. You do not know when you are going to sea again? A. No, sir.
- Q. How long have you been ashore now since you left the Hammond Lumber Company?
- A. I left the Hammond Lumber Company, and since that I was mate on the "Melville Dollar," but I left her on account of this thing.
- Q. When the "Necanicum" reaches port if we consider it necessary to make any further examination, after the bridge log is produced, we can secure your attendance for the short period of time required, can't we?
- A. If you wish. The only thing is I do not want to stay around for nothing.
- Q. We do not ask you to do that. If you do go to sea you will be in the coastwise trade, so that you will be in and out of the port of San Francisco very likely? A. Very likely.
- Q. That is the business you have been in in the last few years?
- A. Yes, sir, but I was thinking of looking up a sailing vessel, and if I do I will probably go off shore.

Mr. DENMAN.—Q. You will let me know?

A. Yes, sir.

Q. Is Mr. Beckwith still on the "Necanicum"?

A. No, sir, Mr. Beckwith is ashore; any time you want him here you can [150] have him.

Q. When did Mr. Beckwith come ashore?

A. I think he must have left the day before yesterday, or yesterday perhaps.

Mr. CAMPBELL.—Q. What is your address, Captain?

A. My address is 3235 Twenty-third Street.

Q. San Francisco?

A. San Francisco. I have a telephone there, too. The telephone number is Valencia 5231.

Mr. DENMAN.—Q. Is it your opinion, Captain, on this day that the vessel had swung as much as four points to starboard on the reversing propeller?

A. Well, I would not say, Mr. Denman; somewhere in that neighborhood; three or four points I would say, in that neighborhood.

Q. In your opinion would it reach as much as 5?

A. I do not think so. I would say that she would swing three or more points in two minutes.

Q. By that you do not mean 10 more?

A. No, sir.

Q. Between three and four?

A. Well, about between three and four points.

Mr. DENMAN.—That is all.

Mr. CAMPBELL.—That is all. [151]

United States of America, State and Northern District of California, City and County of San Francisco,—ss.

I, Francis Krull, United States Commissioner for the Northern District of California, do hereby certify that the reason stated for taking the foregoing deposition is that the testimony of the witnesses Walter N. Beckwith, John T. Gannan, George A. Olsen and Austin Keegan is material and necessary in the cause in the caption of the said depositions named, and that they are bound on voyages to sea and will be more than one hundred miles from the place of trial at the time of trial.

I further certify that on Friday, April 17th, Tuesday, April 28th, Monday, May 11th, Tuesday, May 12th, 1914, I was attended by Ira A. Campbell, Esq., proctor for the libelant, and by William Denman, Esq., proctor for the respondent, and by the witnesses who were of sound mind and lawful age, and that the witnesses were by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth; that said depositions were, pursuant to the stipulation of the proctors for the respective parties hereto taken in shorthand by Herbert Bennett, and afterwards reduced to typewriting; that the reading over and signing of said depositions of the witnesses was by the aforesaid stipulation expressly waived.

Accompanying the said depositions and forming a part thereof are "Libelant's Exhibit 1," "Libelant's Exhibit 2," "Libelant's Exhibit 3," "Libelant's Exhibit 4," for identification, and "Claimant's Exhibit 1," introduced in connection [152] therewith and referred to and specified therein.

I further certify that I have retained the said depositions in my possession for the purpose of delivering the same with my own hand to the United States District Court for the Northern District of California, the Court for which the same were taken.

And I further certify that I am not of counsel nor attorney for any of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto subscribed my hand at my office in the City and County of San Francisco, State of California, this 15th day of June, 1914.

[Seal] FRANCIS KRULL,

U. S. Commissioner, Northern District of California, at San Francisco.

[Endorsed]: Filed Jun. 16, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [153]

In the United States District Court, for the Northern District of California, First Division.

No. 15,513.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation, Owner of the American S. S. "BEAVER,"

Libelant,

VS.

The Steam Schooner, "NECANICUM," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

Notice of Taking Deposition De Bene Esse (of Theodore J. Hewitt, 15,513).

To Claimant and Respondent Above Named, and to Its Proctors:

You and each of you will please hereby take notice that Theodore J. Hewitt, a witness whose testimony is necessary in this cause, and who resides at a greater distance from the place of trial than one hundred miles, will be examined de bene esse, on the part of libelant in this cause, before John P. Hannon, Esq., a notary public in and for the State of Oregon, at his office in the Wells Fargo Building, situate in the City of Portland, State of Oregon, on Tuesday, the 13th day of October, 1914, at the hour of ten o'clock in the forenoon of said day, at which time and place you are hereby notified to be present and propound interrogatories if you shall think fit.

Dated: San Francisco, Cal., October 8, 1914.
IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Libelant.

Service of the within notice and receipt of a copy is hereby admitted this 8th day of October, 1914, 11:30 A. M.

W. S. BURNETT,
WILLIAM DENMAN,
DENMAN and ARNOLD,
Proctors for Respondent. [154]

In the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,513.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation, Owner of the American S. S. "BEAVER,"

Libelant,

vs.

The Steam Schooner "NECANICUM," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

Order for Taking of Deposition De Bene Esse (of Theodore J. Hewitt, 15,513).

IT IS HEREBY ORDERED that the deposition of Theodore J. Hewitt, a witness on behalf of libelant in the above-entitled cause, may be taken before John P. Hannon, Esq., a notary public in and for the State of Oregon, at his office in the Wells Fargo Building, in the City of Portland, State of Oregon, at the hour of ten o'clock A. M. on Tuesday, the 13th day of October, 1914, upon a notice de bene esse being given to the proctors of claimant and respondent, Messrs. Denman & Arnold, of San Francisco, California, such notice to be served not later than the hour of twelve o'clock noon of this 8th day of October, 1914.

Dated: San Francisco, California, October 8, 1914. M. T. DOOLING,

District Judge.

Service of the within order and receipt of a copy is hereby admitted this 8th day of October, 1914, 11:30 A. M.

W. S. BURNETT,
WILLIAM DENMAN,
DENMAN and ARNOLD,
Proctors for Leggett S. S. Co. [155]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,675.

LEGGETT STEAMSHIP COMPANY, a Corporation,

Libelant,

VS.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Respondent.

Notice of Taking Deposition De Bene Esse (of Theodore J. Hewitt, 15,675).

To Libelant Above Named, and to Its Proctors:

You and each of you will please hereby take notice that Theodore J. Hewitt, a witness whose testimony is necessary in this cause, and who resides at a greater distance from the place of trial than one hundred miles, will be examined *de bene esse*, on the part of respondent in this cause, before John P. Hannon, Esq., a notary public in and for the State of Oregon, at his office in the Wells-Fargo building, situate in the City of Portland, State of Oregon, on Tuesday, the

13th day of October, 1914, at the hour of ten o'clock in the forenoon of said day, at which time and place you are hereby notified to be present, and propound interrogatories if you shall think fit.

Dated: San Francisco, Cal., October 8, 1914.

IRA A. CAMPBELL, McCUTCHEN, OLNEY & WILLARD,

Proctors for Respondent.

Service of the within notice and receipt of a copy is hereby admitted this 8th day of October, 1914, 11:30 A. M.

WILLIAM DENMAN, W. S. BURNETT, DENMAN and ARNOLD, Proctors for Libelant. [156]

In the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,675.

LEGGETT STEAMSHIP COMPANY, a Corporation,

Libelant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Respondent.

Order for Taking of Deposition De Bene Esse (of Theodore J. Hewitt, 15,675).

IT IS HEREBY ORDERED that the deposition of Theodore J. Hewitt, a witness on behalf of respondent in the above-entitled cause, may be taken

before John P. Hannon, Esq., a notary public in and for the State of Oregon, at his office in the Wells-Fargo Building, in the City of Portland, State of Oregon, at the hour of ten o'clock A. M. on Tuesday, the 13th day of October, 1914, upon a notice de bene esse being given to the proctors of libelant, Messrs. Denman and Arnold, of San Francisco, California, such notice to be served not later than the hour of twelve o'clock noon of this 8th day of October, 1914.

Dated: San Francisco, California, October 8, 1914.

M. T. DOOLING,

District Judge.

Service of the within order and receipt of a copy is hereby admitted this 8th day of October, 1914, 11:30 A. M.

W. S. BURNETT,
WILLIAM DENMAN,
DENMAN and ARNOLD,
Proctors for Libelant. [157]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation, Owner of the American S. S. "BEAVER,"

Libelant,

vs.

The Steam Schooner "NECANICUM," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

LEGGETT STEAMSHIP COMPANY, a Corporation,

Libelant,

VS.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Respondent.

Deposition of Theodore J. Hewitt, for Respondent.

BE IT REMEMBERED that, pursuant to a notice of taking deposition de bene esse issued at San Francisco, California, on October 8, 1914, by proctors for respondent, and an order for taking deposition de bene esse made and issued at San Francisco, California, on October 8, 1914, by the Honorable M. T. Dooling, District Judge of the above-entitled court, both notice and order being hereto attached

and made a part hereof, on October 13, 1914, at the hour of ten o'clock A. M., at my office number 510 Wells-Fargo Building, Portland, Multnomah County, Oregon, before me, John P. Hannon, a notary public in and for the State of Oregon, duly commissioned, sworn and qualified, personally appeared THEODORE J. HEWITT, a witness produced on behalf of the respondent; Erskine Wood appearing on behalf of libelant, and W. A. Robbins on behalf of respondent.

Said witness being first duly sworn to testify to the truth, the whole truth and nothing but the truth, was then and there examined by counsel for the respective parties, and testified as follows: [158]

Direct Examination.

(By Mr. ROBBINS.)

- Q. Your name is Theodore J. Hewitt, I believe?
- A. Yes, sir.
- Q. Where do you reside, Mr. Hewitt?
- A. I live here in Portland.
- Q. How long have you resided here?
- A. Since 1907.
- Q. What has been your business or occupation during that time? A. I am an attorney.
 - Q. How long have you been an attorney?
- A. Well, I was admitted in the State of Nebraska in 1903.
- Q. What class of practice do you do here in the City of Portland? A. A general practice.
- Q. What is the fact as to whether or not you have any connection with the San Francisco and Portland

Steamship Company, the respondent in this case?

- A. None whatever.
- Q. Have you any connection, or have you ever had any connection with the so-called Harriman interests? A. No, sir.
- Q. Do you recall where you were during the latter part of October, 1913—October 30th, for instance?
- A. Yes, we were on the steamship "Beaver" going from Portland to San Francisco. We left Portland on the afternoon of the 28th, as I remember, of October.
- Q. And after you put out to sea do you recall what, if anything, happened along about two in the afternoon of the 30th?
- A. On the 30th we had a little collision with a steam schooner, or ship of some kind out there on the ocean.

 [159]
- Q. Do you recall whether or not the name of the vessel was the "Necanicum"?
 - A. "Necanicum"; yes, sir.
- Q. State where you were and what you were doing prior to the collision.
- A. Well, I was sitting at the very back end of the boat, the stern, on the top deck—or the poop deck, I guess they call it—something like that. I was smoking, sitting there watching the ship carpenter; he was repairing some seats.
- Q. Now, what was the condition of the weather at that time?
- A. Well, the weather had been very nice during the fore part of the day and up until just a little while

before two o'clock, when we ran into a fog bank,—it seemed kind of to roll up onto us, or we ran into it; rather dense, not very dense, but quite a heavy fog bank.

- Q. Now, while you were watching the ship's carpenter at work what, if anything, happened in the way of signals?
- A. Well, just before we went into the fog bank they began blowing the fog-whistles.
- Q. Pardon me; you mean by "they" the "Beaver"?
- A. I mean the "Beaver," our steamship. And the fog signals were blown continually, about every minute, as I understand; they were blown.
- Q. The fog-signal you refer to was the automatic fog-signal?
 - A. Yes; regular fog-signal that always blows.
- Q. And for how long a period prior to the collision did you hear the fog-signals blown?
- A. Well, I don't remember, but it must have been half an hour or so, at least, as I recall it.
- Q. And did you hear any other signals by the "Beaver"? [160]
- A. Well, after a little while, half an hour or so—I forget just how long—there was one long blast.
 - Q. Was it the "Beaver's" whistle?
- A. Yes; quite different from the regular fogwhistle; and the ship's carpenter raised up and looked out across the ship towards the port side, off that way, and I turned,—as I was sitting almost facing directly the starboard side, I turned to the

(Deposition of Theodore J. Hewitt.)
port side, leaned that way, to watch the ship go by,
as I know that was the whistle to pass to port, and I

as I knew that was the whistle to pass to port, and I turned to see the ship as it went by.

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Q. Well, I forgot to ask you where you were sitting with reference to the center of the boat.

A. Right at the center—right back over the propeller.

Q. At the stern?

A. At the stern; yes. And I kind of swung around to the left to watch the other boat go by; and it was only, I should think, possibly a couple of minutes or so—it might have been three or four, but a very short time afterwards, they gave three short, sharp blasts.

Q. That is, the "Beaver"?

A. The "Beaver" did; yes. And the ship began to stop and shake; the ship trembled all over, and I knew that something was wrong; and the carpenter dropped his tools—he had a brace and bit, I think he was boring holes with—dropped that, let it fall on the floor, and ran directly across the ship toward the port side, and I knew then that there must be something wrong, and I ran down along the port side until I came to the life boats as they hung there and looked out across the water, and there I saw this other boat sitting almost at right angles ahead, quite a little bit ahead. [161]

- Q. The "Necanicum"? A. Yes, sir.
- Q. Now, at that time, how far, in your opinion, was the "Necanicum" from the "Beaver"?

A. Well, the fog, of course, was deceptive, and distance on the water I was not used to; I could not say

(Deposition of Theodore J. Hewitt.) definitely, but should judge it must have been a couple hundred yards out there.

Q. And then after you saw the "Necanicum," what if anything else happened?

A. Well, I stood there looking at them a few minutes and didn't think of a collision until they kept drifting closer and closer together, and as I stood there I said to myself, "They are going to strike, sure as the devil." I heard someone laugh, and I saw a young fellow and a girl; they didn't know that there was another boat there, and didn't know what I was talking about, and laughed to hear me make that remark. And I stood there, and then they came right on and crashed together.

Q. Can you describe the impact, whether violent or not?

A. Quite violent—a loud noise, loud, crashing noise, and our boat listed quite a great deal to the right, or the starboard side; and my little boy, about seven years old, had been over on the starboard side watching a man painting the life-boats.

Mr. WOOD.—You don't know anything about that?

A. Well, he told me; he came running back to me. Mr. ROBBINS.—We don't want what someone else said.

A. Well, he came back there crying; it frightened him, and he came back to find me and I was not there.

[162]

Q. First, now, what, if anything happened after the boat struck?

A. Well, the crowd on our boat—all the people on our boat crowded to the forward end of the boat.

Q. Well, what I mean, did they back straight away, the "Necanicum"?

A. The "Necanicum" backed straight away from us, and kept backing right straight off; they went right straight back away from us to the shore, and finally our boat signalled—gave some whistles, I don't remember what those signals were, but immediately the "Necanicum" answered.

Q. For what distance would you say the "Necanicum" was after backing away from the "Beaver"?

A. Well, that must have been, oh, several hundred yards, probably five or six hundred yards, at least, they backed right straight away from us; possibly further than that. I could not tell distance very well on the ocean, of course, in the fog.

Q. Now, what is the fact as to whether or not the "Beaver's" course was changed up to the time of giving the one long blast of the whistles?

A. As far as I know, there was no change in it at all. We were drifting along there smoothly, and nothing out of the way at all—seemed to be going right straight along. I sat at the very back of the boat over the propeller there, and I noticed no change whatever up until the three short blasts; that was the first change I noticed. That followed immediately within two or three minutes after the one long blast. The "Necanicum" blew no whistles at all, neither the fog-whistles nor response to the long blast to pass our boat.

- Q. Well, did the "Beaver" change her course after she gave the long blast at any time?
- A. Oh, she did; I know she did after the three short blasts; [163] but whether she did before that I was not noticing; but I know that they veered strongly to the right.
 - Q. That is to starboard?
 - A. To starboard; yes.
 - Q. That was just prior to the collision?
- A. Yes, just prior to the collision, before I started to go down along the side.
- Q. Did you have any trouble in noticing the difference between the long whistle and the automatic whistles of the fog-signal?
- A. Oh, that was quite noticeable, the difference in those; it was one long blast then.
- Mr. WOOD.—I understand you say they were given on different instruments, that is why the whistles were quite different in sound?
- A. Well, I don't know about that. I know it was a long whistle, and the carpenter raised up and looked over toward the port side, and then when he did that I swung in my seat, kind of changed my position and turned that way, to the port side; and the life-boats were in the way, and I thought the boat must be out beyond the life-boats and I couldn't see it, you know.
- Q. Kindly describe as near as you can the fog before and at the time of the collision, whether it was dense, coming in clouds, or how.
- A. Well, we seemed to run into the fog; it was a fog bank that either came rolling up to us or that

we ran into. Yes, it was fairly dense, but not one of those blinding fogs. I could see all parts of our vessel, and I could see the other boat there quite plainly but I couldn't distinguish anything on it; it looked like a large, dark hull sitting out there, you know.

- Q. Where did the "Necanicum" strike the "Beaver"?
- A. About ten feet back of the stem of the boat, the front end [164] on the port side; made a big dent in it from the water-line clear to the top-broke the railing off at the top.
- Q. Do you know of anything else in connection with this matter that I have not asked you about, that is, the main collision?
 - A. No; nothing further that I know of.

Cross-examined by Mr. WOOD.

- Q. Mr. Hewitt, when you were sitting on the stern there before you entered the fog bank, you were just watching the carpenter work? A. Yes, sir.
- Q. And when you entered the fog bank, and when the whistles or fog-signals began to be given by the "Beaver," did you notice any change in her speed?
 - A. No, I can't say that I did.
- Q. As far as you know then, her speed was not slackened when she entered the fog bank?
 - A. Not that I could tell: no.
- Q. Do you know what her speed had been before A. No, I don't know that either.
- Q. But before that time the weather had been clear and nice?

- A. Yes, as I remember it had been very pleasant.
- Q. Now, where you were sitting—you were on the highest deck? A. Yes, the very highest.
 - Q. Where the life-boats are? A. Yes.
- Q. Right over the propeller; then you would be directly amidships of the boat? A. Yes.
 - Q. Over the keel? [165] A. Yes.
- Q. Now, when you heard the first long blast of the "Beaver"—I don't mean the fog signals; I mean the passing whistle—you then just turned in your seat and looked on the port side, expecting to see this other boat? A. Yes.
 - Q. And at that time did you see her or not?
- A. No; the life-boats on the port side shut off my view of any distance away.
- Q. Are the life-boats in a continuous string along the port side without any gaps between them?
- A. As I remember, there were two or three on the outer side, and one or two on the inner, and a passage way between them, so that it shut off my view of the sea on the port side, although I could see down the vessel.
- Q. Shut off your view of the sea on the port side entirely? A. Yes, sir.
 - Q. Was your view forward shut off?
- A. Forward along the ship? I could see parts of the ship forward.
 - Q. You couldn't see the ocean forward.
 - A. No, I didn't notice the ocean.
- Q. At the time then of the first signal you didn't know yourself whether the "Necanicum" was on the

(Deposition of Theodore J. Hewitt.) port bow of the "Beaver" or dead ahead, or on the starboard bow, did you?

- A. No, except that I recognized the whistle.
- Q. Simply the fact they gave one whistle led you to think it was on the port side?
- A. Not altogether. The fact of the carpenter having raised up and looked across that way called my attention to it, to look over across that way. [166]
- Q. Then not seeing any boat there, as I understand, you got up and walked forward on the port side?

 A. That was after the—
 - Q. After the three whistles?
- A. After the three whistles; after the carpenter dropped his tools and ran.
 - Q. He ran?
- A. He dropped his tools on the floor and ran over toward the port side, diagonally across.
 - Q. And you followed him?
 - A. I walked down on the outside, on the port side.
 - Q. You mean on the outside of the life boats?
- A. Outside of the life-boats; I walked down along the port side until I got to the life-boats, and I could see the boat sitting out there in the water.
 - Q. That is, when you reached the first life-boat?
 - A. Yes, then I could see the "Necanicum."
 - Q. How long was that after the three whistles?
- A. Oh, that was immediately; quick as he dropped his tools and ran. I knew something was wrong; I knew from the way the boat was trembling and shaking there was something wrong.
 - Q. Was the "Beaver" reversing at that time?

A. I suppose so. Of course I don't know what that whistle was, but they were certainly making a big commotion.

Q. You judge that from the trembling of the ship?

A. Because of the propeller right below me, and the trembling of the ship and her veering to the right at that time.

Q. How long were the three whistles after the first passing blast?

A. That, as I say, must have been anywhere from two to four minutes afterward; shortly afterward.

[167]

Q. When you ran forward immediately after the three whistles and stood by the stern against the life-boat, and looked off and saw the "Necanicum," is that when you mean she was about two hundred yards away?

A. As I remember it then; of course, the distance might have been very deceptive to me.

Q. You said she appeared to be at right angles to you? A. Almost; yes.

Q. Was she abeam of you or was she off the port bow?

A. She was off the port bow, quite a little ways forward.

Q. But the two boats were lying approximately at right angles?

A. As near I could judge them they were headed a little towards us, and our bow seemed to be turning to the right continually, and they were heading at right angles to our boat possibly, towards us.

Q. A little bit more than right angle?

A. Yes, kind of towards us.

Mr. WOOD.—It might be a good idea to make a rough diagram there.

(Witness draws a diagram.)

- Q. Now, how far do you estimate it from your position upon the "Beaver" to the bow of the "Necanicum", ?
- A. Well, as I say, it seems to me it was about two hundred yards.
- Q. I will mark with a dotted line the distance that you estimate to be two hundred yards.
- A. Of course, as I say, it was the first time I was ever on the ocean, and being in a fog, I could easily have been mistaken as to the distance: it could have been more or less, but that is what it seemed to me.
- Mr. WOOD.—I offer the diagram as Libelant's Exhibit 1. [1671/2]

(Said diagram was marked Libelant's Exhibit 1, and is attached hereto and made a part of this deposition.)

- Q. Judging from this diagram then, I would suppose that the "Beaver" swung off after the three whistles quite rapidly, quite sharply, swung off to starboard, to her own starboard; is that correct?
- A. Yes, I think she was practically stopped by the time of the collision; she swung to the starboard and started to reverse, and at the time the "Necanicum" struck I think she was practically stopped.
- Q. But what I mean is this: When you first looked forward from your seat at the stern, you did not

see any boat on the port side at all, and you didn't notice any change in the "Beaver's" course after her first whistle? The first change you noticed in her course was after three whistles, and then you ran forward and saw the boats in that position, which would lead me to think that the "Beaver" must have swung very rapidly after the three whistles to her own starboard, and I wanted you to say if I am right.

- A. That is the impression that I got of it, that she swung to the starboard, and so in reversing had tried to stop and let the other boat pass on ahead.
- Q. Would you guess that she swung as much as at right angle to her former course?
 - A. No, she didn't swing that far.
 - Q. How much would you think?
 - A. Well, I couldn't say how much.
- Q. When you saw the "Necanicum" two hundred yards away through the fog, is that the time you refer to when you said you could [168] not distinguish objects on her very well, you could just see a dark hull out there? A. Yes, sir.
 - Q. The fog then was quite dense?
 - A. A fairly dense fog; yes.
- Q. Were any other passengers about on the deck that you know of?
- A. No, not up where I was there was not, except these two that laughed when I made that remark; I noticed them there,—and my little boy.
 - Q. He was on the lower deck from you?
- A. He was on the same deck, on the starboard side until he got scared, I don't know just where, at the time.

Q. When the "Necanicum" backed off after the collision five or six hundred yards, as you estimate, what happened then? Did the boats each go on their way, and you lost sight of the other, or what?

A. Before we started on our boat signalled them and they signalled back. I don't remember what those whistles were or how many, except what I was told by the purser afterwards, and immediately after that we proceeded on our way.

Q. Well, when she was off five or six hundred yards, is that when you lost sight of her on account of the fog?

A. Well, I don't remember. After we had started on-

Q. (Interrupting.) You paid no more attention.

A. Paid no more attention, but we were all talking and trying to get to the purser and to the captain to find out what had happened, and then as many as could rushed to the wireless to find out what they were sending out there if we could.

Q. How long was it from the three whistles to the collision?

A. Well, I can't say exactly how long, but it could have been [169] but a very few minutes, I know, as I first saw her out there I didn't think anything about their going to strike, but they kept drifting closer and closer together.

Q. And your boat kept drifting?

A. Our boat had practically come to a standstill, and theirs came right on.

Q. How could you tell that yours was standing still?

A. I could tell by the feeling of it, and by the way we were moving in the water that we were practically come to a standstill.

- Q. Were you still reversing? A. Yes.
- Q. That is, the engines were still going?
- A. Yes, the engines were still going.
- Q. I asked you before what her speed was—I mean the "Beaver's"—before she entered the fog bank, and you said you didn't know. You probably thought I wanted you to answer in knots; I didn't want that—I wanted an idea whether it was fast or slow.
- A. Oh, fast or slow. Well, I couldn't notice any change in the boat except that we were going along at the regular rate.
 - Q. Ordinary speed and fair weather?
- A. Ordinary speed and fair weather, when we first ran into the fog bank. We heard no whistles at all, other than our own. They didn't even answer the "Beaver's" whistle.

Mr. ROBBINS.—The "Necanicum" didn't?

- A. They didn't answer them.
- Q. You mean you didn't hear them?
- A. Yes; I didn't hear them.

Mr. ROBBINS.—You could have heard them if they had been blowing?

- A. Well, I heard their answer after the collision; I heard [170] that very plainly.
 - Q. That was when they were closer together?
- A. They must have been five or six hundred yards away at that time.

(Deposition of Theodore J. Hewitt.)

Redirect Examination.

(By Mr. ROBBINS.)

- Q. Now, this fog bank you are talking about, where did you first run into this with reference to the collision,—that is, how long before?
- A. Well, as I remember not over twenty minutes, possibly half an hour; and it was not very long before, we hadn't been in it very long, as I recall. Not thinking about it I might not be very accurate in my remembrance of it.
- Q. Did that fog close clear down; or was it a floating cloud?
- A. Well, I couldn't say; it was gone a short time afterwards; an hour or so afterwards we were out of it again.
- Q. Well, in any event it didn't prevent your seeing the "Necanicum" two hundred yards away? I realize it is hard to describe a fog.
- A. Oh, I could see the boat. As I came down along the side of our boat and looked out there I could see it.
- Q. I believe you testified that the "Beaver" had practically stopped at the time they struck. How long before they struck had she stopped?
- A. Well, I couldn't say as to that, because I was looking at the other boat pretty closely.
- Q. What could you estimate—one minute, or three, or five?
- A. It couldn't have been over a minute she was stopped, because they came together quite rapidly.

 [171]

Recross-examination by Mr. WOOD.

Q. Well, I understood when you said she was practically stopped that she still had a little motion on her, and you answered Mr. Robbins just now that she had stopped perhaps a minute before the collision. You don't mean she was absolutely dead in the water?

A. No, I don't mean that—that she was as near as I could tell. We were practically stopped. She might have been drifting with her own momentum.

Q. She might still have had a little headway on?

A. Or might have been reversing, backing, as far as I know. I was not noticing that part of it at that particular moment.

Mr. ROBBINS.—You knew the engines had been stopped—had been reversed?

A. I am sure the engines had been reversed.

Q. The engines were reversed, as you judged from the tremor of the boat?

A. Yes, that is all I know.

Q. At the same time the three whistles were blown.

A. At the time the three whistles were blown.

Q. And then is when she began to swing rapidly to her own starboard? A. Yes.

AND FURTHER DEPONENT SAITH NOT. THEODORE J. HEWITT. [172]

State of Oregon,

County of Multnomah,—ss.

I, John P. Hannon, a notary public in and for the State of Oregon, duly commissioned and sworn, hereby certify that, pursuant to the notice and order

to take deposition de bene esse both issued at San Francisco, California, on October 8, 1914, by the Honorable M. T. Dooling, District Judge of the within entitled court, hereto attached, appeared, at the time and place mentioned in the caption hereof, Theodore J. Hewitt, a witness produced on behalf of the within named respondent, and after being by me first duly and publicly sworn to tell the truth, the whole truth and nothing but the truth, said witness was examined by proctor for respondent and cross-examined by proctor for libelant, and said examination, together with the answers of said witness thereto, was by me caused to be taken down in shorthand and afterwards transcribed into typewriting; and after being so transcribed the testimony of said witness was read over and corrected by said witness, who thereupon in my presence subscribed the same.

I further certify that the exhibit attached hereto, being marked "Libelant's Exhibit 1" and initialed by me, is the identical paper which was offered during the examination of said witness, and is herewith returned as part of said deposition.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal this 13 day of October, 1914.

[Seal] JOHN

JOHN P. HANNON,

Notary Public for Oregon. [173]

(Libelant's Exhibit 1 has been detached from the original deposition, and transmitted to U. St. C. C. A. in its original form.)

[Endorsed]: Opened and filed in open court, this 20th day of Oct. 1914. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [174]

In the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,513.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation, Owner of the American S. S. "BEAVER,"

Libelant,

VS.

The Steam Schooner "NECANICUM," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

LEGGETT STEAMSHIP COMPANY, a Corporation,

Claimant.

Notice of Taking Deposition De Bene Esse (of A. F. Pillsbury, 15,513).

To Claimant and Respondent Above Named, and to Messrs Denman & Arnold and W. S. Burnett, Esq., Its Proctors:

You and each of you will please hereby take notice that A. F. Pillsbury, a witness whose testimony is necessary in this cause, and who is about to go out of the district in which the said cause is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial,

and who cannot be present in court at said trial on the 20th day of October, 1914, will be examined de bene esse, on the part of the libelant in this cause, before Francis Krull, Esq., a United States Commissioner in and for the Northern District of California, at the office of Messrs. McCutchen, Olney & Willard, situated in the City and County of San Francisco, State of California, on Monday the 19th day of October, 1914, at the hour of four o'clock P. M. of said day, at which time and place you are hereby notified to be present and propound interrogatories, if you shall think fit.

Dated, San Francisco, California, October 19, 1914, 12:20 P. M.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY, & WILLARD,
Proctors for Libelant. [175]

Service of the within notice and receipt of a copy is hereby admitted this 19th day of October, 1914, 12:20.

W. S. BURNETT,
WILLIAM DENMAN,
DENMAN and ARNOLD,

Proctors for Claimant and Respondent. [176]

In the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,675.

LEGGETT STEAMSHIP COMPANY, a Corporation,

Libelant,

VS.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Respondent.

Notice of Taking Deposition De Bene Esse (of A. F. Pillsbury—15,675.

To Libelant Above Named, and to Messrs. Denman & Arnold and W. S. Burnett, Esq., Its Proctors:

You and each of you will please hereby take notice that A. F. Pillsbury, a witness whose testimony is necessary in this cause, and who is about to go out of the district in which the said cause is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, and who cannot be present in court at said trial on the 20th day of October, 1914, will be examined de bene esse, on the part of the respondent in this cause. before Francis Krull, Esq., a United States Commissioner in and for the Northern District of California, at the office of Messrs. McCutchen, Olney & Willard, situated in the City and County of San Francisco, State of California, on Monday, the 19th day of October, 1914, at the hour of four o'clock P. M., of said day, at which time and place you are

hereby notified to be present and propound interrogatories, if you shall think fit.

Dated: San Francisco, California, October 19, 1914, 12:20 P. M.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Respondent. [177]

Service of the within notice and receipt of a copy is hereby admitted this 19th day of October, 1914, 12:30.

W. S. BURNETT,
WILLIAM DENMAN,
DENMAN and ARNOLD,
Proctors for Libelant. [178]

In the District Court of the United States, in and for the Northern District of California, First Division.

No. 15,513.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY (a Corporation),

Libelant,

VS.

The Steam Schooner "NECANICUM," Her Tackle, Apparel, etc.,

Respondent.

No. 15,675.

LEGGETT STEAMSHIP COMPANY (a Corporation).

Libelant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY (a Corporation),

Claimant.

Deposition of Alfred F. Pillsbury, for Libelant.

BE IT REMEMBERED that on Monday, October 19, 1914, pursuant to notice and order of Court filed in the above-entitled cause, at the office of Messrs. McCutchen, Olney & Willard, in the Merchants Exchange Building, in the city and county of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., Alfred F. Pillsbury, a witness produced on behalf of libelant.

Ira Campbell, Esq., appeared as proctor on behalf of the libelant, and William Denman, Esq., appeared as proctor on behalf of the claimant, and the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, did thereupon depose and say as in hereinafter set forth.

(It is hereby stipulated that the deposition, when written out, may be read in evidence by either party on the trial of [179] the cause; that all questions

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(Deposition of Alfred F. Pillsbury.)

as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the deposition of Alfred F. Pillsbury may be taken in shorthand by E. W. Lehner. It is further stipulated that the reading over of the testimony to the witness and the signing thereof is hereby expressly waived.) [180]

ALFRED F. PILLSBURY, called for the libelant, sworn.

Mr. CAMPBELL.—Q. Your name is Alfred F. Pillsbury? A. Yes.

- Q. What is your business?
- A. Marine Surveyor.
- Q. Are you a Master Mariner? A. Yes.
- Q. How long have you held papers as a master?
- A. About 25 years.
- Q. In what trades did you ever command ships as master?
- A. Atlantic trade, European trade, South American trade, China trade, Panama trade and Pacific Coast trade.
- Q. What type of ship were you master of in the China trade? A. Pacific Mail steamers.
 - Q. From the port of San Francisco? A. Yes.
- Q. What other types of vessels have you commanded?
 - A. I commanded the steamer "Minneola," which

was a tramp freighter collier and I commanded the steamer "Progresso," which was a tramp freighter blown up in this harbor in 1902; that was after I had left her. I have commanded sailing vessels, schooners, brigs and barks.

- Q. How long have you been a surveyor?
- A. Between 11 and 12 years.
- Q. Are you attached to any board or society at the present time as a surveyor?
- A. Yes; I am Pacific Coast representative of the Bureau Veritas, a classification society.
- Q. That is the French classification society which corresponds to Lloyd's Register of Shipping?
 - A. Yes.
- Q. Did you make a survey of the steamer "Beaver" following her collision with the steam schooner "Necanicum"? A. I did.
 - Q. On what date did you see the "Beaver"?
 - A. By looking at my notes I can tell you. [181]
- Q. When were the notes made to which you are referring?
- A. Made at the time. November 1, I made the first inspection of the "Beaver."
- Q. Where was she at that time?
- A. She was at the company's Pier 40, I think,—on the north side of Pier 40.
 - Q. When did you next inspect her?
- A. The next inspection was November 2d at Hunter's Point drydock.
 - Q. At whose request did you make these surveys?
 - A. At the request of yourself.

Q. Will you describe, Captain, the damage which you found to have been inflicted upon the "Beaver"?

A. I found the port side had been broken in from the shelter deck down to seven strakes below, and from there down the plating was buckled and crimped; that is on the port side; the balance of the way down the plating was disturbed, either by being buckled or crimped, all the way down to and including the keel plating. On the starboard side the plating was disturbed practically all the way down. The indent on the port side was in to within about 38 inches of the center line of the steamer.

Q. What depth of penetration would that be?

A. That would be a penetration of somewhere between 40 to 42 inches.

Q. On which deck was that?

A. That was on the shelter deck. It was about 8 inches more, or rather, I won't say more—it was nearer the center line on the main deck, to within 30 inches of the center line on the main deck; but the ship was a little narrower on the main deck than she was on the shelter deck.

Q. Is the shelter deck what you term the upper A. The upper deck or weather deck. [182] deck?

Q. What type of bow has the "Beaver"?

A. A very sharp bow, slightly flaring from the last 10 or 12 feet.

A. At the same point abaft the stem, which is the wider deck? A. The shelter deck.

Q. How does the main deck compare with the 'tween-decks? A. A little wider, but not much.

- Q. What was the condition of the main and shelter decks, particularly the main deck, at the point of contact? A. Particularly the main deck?
 - Q. Yes.
- A. Well, it was set in and disturbed, the plating buckled up and everything in connection with it at that point broken or bent.
 - Q. What kind of a deck was the main deck?
 - A. The main deck was a steel deck.
 - Q. What was the shelter deck?
- A. Wood-sheathed; I am not sure now without referring to the survey whether it was steel underneath or not.
 - Q. In what condition did you find the stem to be?
- A. The stem was out of line; to my recollection it was curved over to port; taking it at the top in the position it should be, possibly it was a little over to starboard and then it made a curve over to port down pretty nearly to the lower part.
- Q. How far down on the starboard side was there damage to the plates?
 - A. I don't remember exactly.
- Q. How did the damaged plates on the starboard side look to the eye?
 - A. Well, they buckled outward, outboard.
- Q. At what angle, Captain, in your judgment, did the two vessels come together?
- A. At an angle of 5 or 6 points off the bow of the "Beaver." [183]
- Q. I hand you an enlarged photograph and ask you if you can identify it.

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(Deposition of Alfred F. Pillsbury.)

A. Yes; I made that photograph, or rather, I made the original, and this is an enlargement of the original.

Q. Can you state whether or not it correctly shows the damage to the "Beaver" as you saw it at the time you took the photographs?

Mr. DENMAN.—All the damage.

Mr. CAMPBELL.—The damage that is shown in the photograph—the damage to the "Beaver" at the time he took the original.

A. It shows a certain portion of it; the damage on the starboard side it does not show so much.

Mr. CAMPBELL.—I offer that in evidence.

Mr. DENMAN.—Let me cross-examine him on that, if I may.

Q. This shows the—this was taken at about the angle at which you think she struck the vessel?

A. No, I don't know that, Mr. Denman; I could not tell you whether they took it from 3 points on the bow.

- Q. I mean looking at it now; is that about the angle at which you think the two vessels came to-A. No, I don't think so. geter?
- Q. Have you any photographs taken which supplement this by giving the angle looking from stern forward?
 - A. Mr. Campbell has, I think, all that I took, here.
- Q. I am asking you now whether you remember taking any photographs showing the angle from the stern forward.

Mr. CAMPBELL.—Is this a general cross-exam-

ination or cross-examination upon this particular photograph?

Mr. DENMAN.—I want to find out if he has not a photograph showing that.

A. I cannot say, But I would like to state the weather conditions were very bad on that day, it was raining and it was very difficult to get good photographs; I took them the [184] best I could.

Q. Yes; but, Captain, if you wanted to give a fair view from aft forward you could have taken that as well as this view from forward aft, couldn't you?

- A. I don't know that I could.
- Q. Why not?
- A. Because it was very gloomy and rainy weather.
- Q. Would that make any difference as to the angle at which you photographed the cut in that vessel?
 - A. It might.
 - Q. Do you remember that it did?
 - A. No, I am not an expert on photographs.
- Q. But I mean particularly, you wanted to take a view which would give the same angle forward as aft.

Mr. CAMPBELL.—If you are going to examine him generally I shall object to it until I finish my direct examination. If you want to examine him with reference to this photograph, go ahead.

Mr. DENMAN.—Very well.

(The photograph was marked "Libelant's Exhibit 1, Pillsbury.")

Mr. CAMPBELL.—I have here, Mr. Denman, the smaller photographs to which Captain Pillsbury

refers as having been handed to me, if you wish to see them.

Mr. DENMAN.—Are you going to put them in evidence?

Mr. CAMPBELL.—No.

Q. At what angle, in your judgment, Captain, did the two vessels come together?

A. Well, as I have said, at an angle between 5 and 6 points, across the bow of the "Beaver."

Q. Did you ever examine the "Necanicum"?

A. Yes.

Q. When and under what circumstances?

A. The first time I made a rather superficial examination. That was on October 31st. The circumstances were these: Captain Curtis was away, and I was looking after his work. On the morning of the 31st while surveying a steamer on the south side of Pier 27, I think, the steamer "Indrawadi," I noticed the [185] "Necanicum" on the other side of the wharf and some damage there—so I went aboard and asked the captain if I might look at it. I told him the nature of my employment at the time, and while I did not want him to talk about it, I wanted to see it so I could report to the Board of Underwriters, and I just made a preliminary examination of the stem; he told me the tiller was also bent.

Q. Never mind about his conversation, just what you saw yourself.

A. I saw the stem and the damage around the stem.

Q. What did you find to be the character of the damage that was suffered by the "Necanicum"?

A. I found the iron bark stem shattered all the way down, or practically all the way down to the scarphs somewhere about the 6 or 7 foot line; and the stem and the iron bolts that fastened the stem were all bent over to port. I later was called on by yourself and I inspected the "Necanicum" at the United Engineering Works afloat and also on Moore & Scott's railway. At the United Engineering Works I saw the rudder out; it was either on the deck of the "Necanicum" or on the dock. I saw the rudderstock fractured on the after part; it looked like a fresh fracture. The tiller had been straightened; I did not see it when it was bent. I went below by permission of Mr. Jones and found the fuel oil-tank on the port side was shoved forward about 3½ inches; that had torn out and broken the bolts that fasten the strap on the top of the tank to the beam, and had broken the chock on the forward end of the tank and pushed that chock through the wooden bulkhead. The starboard fuel oil tank had shifted very slightly, but had not started any of the chocks or the fastenings.

- Q. What were the fuel oil tanks made of?
- A. Steel.
- Q. Of what size were they?
- A. I think it was five-sixteenths.
- Q. What were the dimensions of the tanks [186]
- A. I wouldn't attempt to tell you. Do you mean in length?

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- Q. Yes. A. I won't attempt to tell you.
- Q. Will you give us an approximate idea of the capacity of the tanks?
- A. I suppose it would be approximately 150 barrels.
- Q. Now, Captain, from what you observed of the nature of the damage to the two vessels and from your experience as a shipmaster and surveyor I ask you what is your opinion as to the possibility of the headway of the "Beaver" having turned the "Necanicum's" head around to port, if the two vessels came together at the angle of impact that you fix.
 - A. I should think that is what did happen.
- Q. How would the degree of the "Necanicum's" penetration into the side of the "Beaver" affect the amount of swinging of the "Necanicum's" head which would result from the collision?
- A. Well, it might affect it in this way; of course the greater penetration perhaps the longer she would be held there by the "Beaver"— the greater the penetration the "Necanicum" made into the "Beaver's" side, the longer would the "Necanicum's" bow he held there.
- Q. What effect would that have upon the swinging around of the "Necanicum"?
- A. That would cause her to swing more until she was free, I suppose.
- Q. Would the fact that the "Necanicum" was drawing 16 feet aft and 4 feet forward, affect the

(Deposition of Alfred F. Pillsbury.) case or difficulty with which she would be so swung around?

- A. Yes, she would be swung around easier; being down at the stern she would swing as though on a pivot.
- Q. From the nature of the damage and your experience what is your opinion as to whether or not the "Necanicum" had any headway on at the time of the impact? [187]
 - A. In my opinion she had considerable headway.
- Q. In your opinion could or could not the damage inflicted upon the "Beaver" have been done if at the time of the collision the "Necanicum" was dead in the water?

 A. It could not have been done.
- Q. Could or could not it have been done if the "Necanicum" at the moment of collision had sternway? A. It would be impossible.
- Q. What in your judgment was the relative speed of the two vessels at the time of impact?
- A. It is hard to say. I think they both had good speed.
- Q. What are your reasons, Captain, for expressing the opinion that the damage could not have been done to the "Beaver" if at the moment of impact the "Necanicum" had been either stopped or had sternway?
- A. Answering your last question, if the "Necanicum" had sternway, I don't see how they could come together. If they had come together it would have been the lightest rub; if the "Necanicum" had no way, but was stopped in the water, the indent on the

(Deposition of Alfred F. Pillsbury.) side of the "Beaver" would have been very light indeed.

- Q. What would have been the nature of the blow?
- A. The "Necanicum" perhaps would have slightly indented the "Beaver" between 1 or 2 or 3 frame spaces, but the frames would be so rigid that they would not have been disturbed. I say it might possibly slightly indent the plates between 1 or 2 or 3 frame spaces.
- Q. Was there or was there not anything about the damage inflicted upon the "Beaver" which showed headway on the part of the "Necanicum" at the time of the collision?
- A. The whole appearance of the "Beaver" would indicate in my opinion that the "Necanicum" had considerable headway. [188]
- Q. Give us a little more in detail what you mean by the whole appearance.
- A. Well, the nature of the injury to the "Beaver," the indent, and the fact that the plating on the other side was buckled out, and the bow, you might say, from that position forward disturbed and thrown out of alignment.
- Q. Were you able to form any personal opinion as to what must have been the speed of the two vessels?
 - A. Not down to the exact mile; no.
- Q. In your best judgment, what would you say their speed must have been?
- A. Well, before answering that I would like to say that I have never heard the speed the "Beaver was

(Deposition of Alfred F. Pillsbury.) making; I should think she must have been going something like 10 knots.

Q. What would you say must have been the speed of the "Necanicum"? A. 5 knots or over.

Q. That is at what time,—the moment of impact?

A. The moment of impact.

Q. If the "Beaver" and the "Necanicum" came together at the angle of impact which you fix and the "Necanicum" was drawing 16 feet aft and 4 feet forward, would it have required any great headway on the part of the "Beaver" to swing the "Beaver's" bow around to port so as to cause the vessels to be heading practically in the same direction after the collision?

A. Well, whether they were going 5 knots or 10 knots, it would still be swung around. I suppose of course the faster she was going the quicker she would be turned.

Q. Now assume that the two vessels approached each other at approximately the angle shown in "Libelant's Exhibit 1" attached to the deposition of Theodore J. Hewett, taken before John P. Hannon, Notary Public for Oregon, at Portland, Oregon, on October 13, 1914, of which exhibit I hand you a copy, and [189] further assuming that the "Beaver" was when in the position shown on the exhibit swinging under a port helm, or immediately thereafter swung under a port helm, could the vessels have come together and inflicted the damage done to the "Beaver" unless the "Necanicum" had headway at the time of the collision?

Mr. DENMAN.—I object to the question on the ground that it contradicts the testimony of every officer and witness of the "Beaver" other than this one who is a mere passenger and nonmaritime person, and that it does not correctly describe the conditions as proved by the officers and crew of the "Beaver," if their proof be true.

Mr. CAMPBELL.—Look at this. Will you repeat the question?

(Last question repeated by the Reporter.)

A. I may take this sketch as it is, may I?

Q. Yes.

A. This is the "Necanicum" and this is the "Beaver." This is the testimony of the witness, that was 200 yards off.

Mr. CAMPBELL.—Yes.

Mr. DENMAN.—And at that angle.

A. No.

Mr. CAMPBELL.—Q. Referring again to the same exhibit and under the same conditions involved in the other question save this change, could the vessels have come together and inflicted the damage done to the "Beaver" if at the moment of impact the "Necanicum" had sternway? A. No.

Mr. CAMPBELL.—I offer in evidenc this copy of "Libelant's Exhibit 1" attached to the deposition of Mr. Hewett, to which I have referred Captain Pillsbury, simply that it may be compared with the original exhibit attached to the deposition which is on deposit with the Clerk of the court and not as yet

(Deposition of Alfred F. Pillsbury.) offered in evidence in the case.

(The document is marked "Libelant's Exhibit 2, Pillsbury.") [190]

Cross-examination.

Mr. DENMAN.—Q. Captain, taking that last exhibit which has been handed to you and as to which you have testified, and extending the center lines of both, of the vessels, could the damage which you found in that vessel have been inflicted at the angle you said it was? A. Yes.

- Q. Under what circumstances? I am presuming now that the "Beaver" is going at the rate of 10 knots and the "Necanicum" at the rate of 5 knots. Right off her bow, isn't she, in that?
- A. It could have been inflicted if the "Necanicum" was going at a greater speed than the "Beaver."
- Q. Now, as a matter of fact, the "Beaver" would have to be practically stopped, would she not?
 - A. Yes.
- Q. Now, judging from the scars that you saw in the vessel and the testimony that you have given here, you believe that they came together at that angle, don't you, shown on that picture? A. Yes.
- Q. Do you believe they came together from that position with those distances apart?
 - A. No, the distance must have been greater.
- Q. And the "Necanicum" must have been turned somewhat to her starboard to have inflicted the injury, must she not?
- A. No. I think that is just between 5 and 6 points.

- Q. But the supposition was that the "Beaver" was turning rapidly to starboard at the time the "Necanicum" was seen. Now, if you turn the "Beaver" to starboard rapidly as the "Necanicum" approaches, the "Necanicum" would have to turn to her starboard? A. Yes. That is right.
- Q. Would you say that that correctly described the condition of those two vessels prior to the collision as you have given your testimony of what it was from the scars? [191]
 - A. Yes, excepting that the distance is not right.
- Q. The distance is not right and the angle is not right?
 - A. I think the angle is pretty nearly right.
- Q. If the "Beaver" was turning rapidly to starboard—
 - A. (Intg.) And the "Necanicum" was turning-
 - Q. (Intg.) To starboard? A. Yes.
- Q. The "Necanicum" would have to be turning to starboard to bring about that condition, would it not? A. Yes.

Mr. CAMPBELL.—Q. To starboard or to port?

A. To starboard.

Mr. DENMAN.—To her starboard.

- Q. Captain, as a matter of fact if the "Necanicum" were to turn to starboard she would not strike the "Beaver" at all, would she? A. Yes.
- Q. Would she strike with sufficient power to do the damage you have described? A. Yes.
 - Q. Going at 8 knots? A. Yes.
 - Q. Then you think that the injury to these two

(Deposition of Alfred F. Pillsbury.) vessels could be accomplished by their meeting at a joint speed of 8 knots, do you? A. Yes, easily.

- Q. So that if the "Beaver" was going 8 knots the supposition would have to be that the "Necanicum" was standing still in order to inflict the injury, would it not?
- A. You say the "Necanicum" would have to be standing still?
- Q. If the "Beaver" was going 8 knots, if the "Necanicum" was standing still, the injury could be inflicted as far as force is concerned by the "Beaver" going 8 knots? A. No, not at all.
- Q. What is the difference between running into a vessel at a sharp angle, which is lying off at a considerable angle to you, and that vessel running into you at a sharp angle?
- Mr. CAMPBELL.—I submit the question is not intelligible. [192]
- Mr. DENMAN.—Q. Is there any difference, Captain?
- A. Will you put that in a different way, Mr. Denman, and illustrate the point a little?
- Q. Will you kindly sketch the two vessels lying at the angle that you thought they were judging from the scars. Sketch them on a piece of paper. I wish you would sketch them.
- A. Of course one is larger than the other. The "Beaver" is nearly twice the length of the other.
- Q. I see that you have drawn the smaller boat, which I will mark the "Necanicum," as striking the

side of the larger boat, which I will mark the "Beaver," at about right angles, the bend of the bow?

- A. Yes, that is pretty nearly it, at the upper part.
- Q. What scars did you find on the starboard side of the "Necanicum" that justified your making that estimate?
- A. I found the paint disturbed, or rather, I found—
 - Q. (Intg.) On the starboard side of the vessel?
- A. I found black paint—may I see that report? I don't know whether I could dig it out of my notes without taking a lot of time. "On making an examination of the 'Necanicum's' bows, black paint was found on the bulwarks on the starboard side about 3 feet aft the stem, which would indicate that the 'Necanicum' had penetrated the 'Beaver's' side to this extent."
- Q. If instead of penetrating at the angle you have given the penetration had been in the angle marked "T," you still might have it for 3 feet on the starboard side, might you not? A. Yes.
- Q. Did you measure the difference between the cut on the starboard side and the port side, on the sides of the "Necanicum"?
 - A. I don't think I did. [193]
- Q. How far do your scars measure back on the starboard side of the "Necanicum"?
 - A. I don't remember.
 - Q. Then you did not estimate the angle at which

they struck by the scars on the "Necanicum"; that is correct, isn't it?

- A. I measured the angle more by the appearance of the "Beaver."
- Q. You did not measure the angle at which they struck by the scars on the "Necanicum." That is correct, isn't it?

 A. That is correct.
 - Q. Why didn't you do it?
- A. Because I thought the other way more conclusive.
- Q. How could it be more conclusive—how could anything be more conclusive than the marks on the side of the "Necanicum" which was not mashed in, was it, on either side? A. No. The port side—
 - Q. (Intg.) Then the marks on the-
 - Mr. CAMPBELL.—Let him finish his answer.
- A. (Continuing.) The port side, the anchor was crushed into the bulwarks.
- Mr. DENMAN.—Q. Was there any injury to the anchor on the starboard side? A. No.
- Q. No pressure applied at all on the starboard side that you could see? A. Not any considerably.
 - Q. Was there any scratches on the starboard side?
 - A. Only that black paint.
 - Q. A little paint on it?
- A. There might have been some slight scratches but there was nothing mashed in.
- Q. You noticed the injury on the port side of the "Necanicum" consisted of smashing the anchor into—
 - A. (Intg.) Into the bulwarks.

Q. How much farther back did it run?

A. I don't know,—no damage was observed on the port side of the bow excepting what [194] was done by her own anchor. No white paint disturbed or soiled on the port bulwarks which extend above the main rail.

Q. How could you account for that?

A. Well, it is one of those things you can't account for. There should have been a disturbance on the port side as well as on the starboard side.

Q. Wouldn't you account for it by the fact that the "Necanicum" held your vessel off?

A. No, but I do account for it by the fact that with the crushing in what happened was this vessel was pulled around and she rubbed up against the side of the "Beaver."

Q. Have you seen that photograph, Captain?

A. I don't think I have.

Q. Does that corretcly describe—

Mr. CAMPBELL.—What is the number of the exhibit?

Mr. DENMAN.—Claimant's Exhibit "C."

Q. Does that correctly describe the condition of the bow as you saw it? A. I think so.

Q. Did you take this photograph, Captain, "Libelant's Exhibit 4-A"?

A. I don't think I did. I am not sure though.

Q. Will you show me on there where the waterline mark of the vessel is?

A. What do you mean by the water-line?

Q. Is there any mark on that vessel showing

where the water stood before it was drawn off?

A. What do you mean,—when she went on the dry-dock?

Q. Yes.

A. Well, that looks something like it, about 11—whether this was or not I could not swear to it.

Q. How about this water-mark here?

A. That may be the loading mark or lower paint mark, I don't know.

Mr. CAMPBELL.—Refer to it by the exhibit number, so that the record will be clear. [195]

Mr. DENMAN.—Q. You notice in this picture "A" that there appears to be a rake back to the bow? A. That may or may not be.

Q. Do you see it appears so in the pictures?

A. Yes.

Q. Now, do you notice that there is an up-tilt to the fence on beyond A. No; that is the shed.

Q. The shed on beyond, whatever it is; that is to say, that it seems to point upward as it goes upward from the vessel?

A. That would rather indicate the whole thing was—

Q. (Intg.) Turned over? A. Yes.

Q. At an angle? A. Yes.

Q. And that the true angle of the bow of the vessel was with the top of it further forward and the bottom of it further aft? A. Yes.

Q. That would be the way it would probably be?

A. I should think so. I don't think her stem raked out at the top.

Q. Now, I ask you whether in this picture—

Mr. CAMPBELL.—If you will refer to "4-G," you will get a better line of the bow or the stem.

Mr. DENMAN.—Q. Now, I ask you whether this picture, Libelant's "4–G" properly represents the angle of the stem to the water-line?

- A. Well, I would not say it represents it to an exactitude.
 - Q. But does it appear to be right?
 - A. I should think so.
 - Q. That is, it rakes a little forward?
- A. I have some of my own here. I would like to see if they give me any light. On that, it appears pretty vertical.
 - Q. That is taken off at an angle?
 - A. Yes, that is a little forward.
 - Q. Let me have that.
- A. I think, myself, it is pretty nearly vertical, but I am not sure of that.
- Q. This picture, which I will mark "Claimant's Exhibit 'A,' Pillsbury," did you take this picture, Captain? A. Yes, I think that [196] is mine.

Mr. DENMAN.—I offer this in evidence.

(The picture is marked "Claimant's Exhibit 'A,' Pillsbury.")

- Q. Now, Captain, I ask you to mark on this picture the place in your opinion where the "Necanicum" first touched the "Beaver"?
 - A. That is all the way down?
 - Q. Where did she first touch her at all?
 - A. Right here (pointing).

Q. Now, I want you to look at Exhibit "I" and tell me where, in your opinion, the "Necanicum" first touched the "Beaver" when she first began to scrape her?

A. On that?

Q. Yes, I want your judgment on it, that is all.

Mr. CAMPBELL.—Let the Captain have an opportunity to make his answers.

A. Those are not my photographs, and I—

Mr. DENMAN.—Q. (Intg.) Well, they are photographs of the same thing, aren't they, Captain?

A. Yes, but still I am not familiar with those, in fact, I have not seen those for some time, either, and that don't give a fore and aft line very well.

Q. But you can show me on that photograph where it first touched, in your opinion, where the scratching of the "Beaver's" side first began?

A. I think it is somewhere in here; it is hard to say; somewhere in there.

Q. Now, Captain, why do you not say that the scratching first began on these heavy indentations in the "Beaver's" side, which I have marked "X" on the pictures, being "I" of Exhibit 4, leaving aside your theory of how they came together, and looking at the marks on the "Beaver," why do you say that she was not scratched at that point first?

A. Because I don't think so.

Q. Why, from the appearance of the scars, she is scratched there, isn't she.

A. I don't know that she is. [197]

Q. What caused these marks there?

A. The shoving in of the whole structure.

Q. How do you account for the scratching of the paint and scratching of the bar and the bend in the bar just above the point "X" and the mashing of it?

A. The bend of the bar?

Q. I am talking about the bend in the bar?

A. I account for the bending of the bar by the crushing in, bending in of the whole structure.

Q. How do you account for the bending in and mashing of the bar at that point as compared with the bend to the left of the letter "X"?

A. The materials that are put under greater pressure will be distorted and take different shapes; it is hard to say what shape it might have been distorted into.

Q. It might have been struck there?

A. I don't think so.

Q. Why?

A. Because I think it was struck further out, where the greatest indent is.

Q. What objection is there to the theory that she struck there, gradually pressed in and finally caught at the point "Y"?

A. Because the place of the greatest indent would be the place where she was hit.

Q. Would that be necessarily so if she were pressing along at an angle, say, of 40 degrees from forward?

A. I don't think it would. I think—

Q. (Intg.) Now, one moment, Captain.

Mr. CAMPBELL.—Give the captain a chance to finish his answers, Mr. Denman.

- A. (Continuing.) My judgment is that the place that gets the first impact is the one that is most dented in; the others are in consequence of that.
- Q. How would you then get the scratches that appear at the point [198] "X" in the paint?
- A. I have stated by the distortion of the metal. On the starboard bow you will find the paint disturbed simply through the wrinkling of the plates.
 - Q. And the outward pressure of the bow?
 - A. Yes.
- Q. How do you account, in view of this theory, for the general lines of scratching extending through the point marked "X" and including the double bend in the side, as shown from the photograph "A" in this exhibit?
- A. The anchor of the "Necanicum" may have caused some indent there.
- Q. Do you know what height the anchor of the "Necanicum" was above the water-line?
- A. It was at a considerable height; I don't know how many feet.
- Q. I will ask you now whether or not immediately above the port or the hawse-pipe of this anchor there appears a large indentation which looks as though it might be made by the anchor? A. Yes.
- Q. Don't you think that is the most likely place where the anchor hit? A. It may be.
- Q. I don't ask you "may be." Don't you think it is the most likely place, Captain? A. Yes.
- Q. That is at the point "T" on "A" of Exhibit 4. Isn't that it? A. Yes.

- Q. Now, the anchor, of course, hit after the bow hit, did it not? A. It might hit simultaneously.
- Q. How could it hit simultaneously if the other vessel was going ahead and there is a flare on the side of your vessel—I mean by your vessel, the "Beaver"?
- A. It might not be the same fraction of an instant, but there would only be a fraction of an instant.
- Q. But it would be enough for motion, would there not?
- A. In a fifth of a second or a tenth of a second it would not [199] be much; it would be just a foot or two.
- Q. Now, I ask you to look at the point "X"; about four feet, is it not, above the anchor mark, Captain?
 - A. Yes.
- Q. I ask you to account for that indentation at the point "X" preceding the indentation which culminates at the point "Z" as shown by this photograph. How would you account for that, other than by a blow being struck there by the oncoming "Necanicum"? A. Why—
 - Q. (Intg.) If you think she was oncoming.
- A. I think that could have been pulled in with the pulling in of the frames of the structure.
- Q. How would it pull in and leave a bulge just beyond—
 - A. (Intg.) It distorts it in all sorts of shapes.
- Q. Isn't it entirely conceivable that the "Necanicum" first struck there, moved along the side, and then engaged further in at the point "Z"?

- A. I don't think so.
- Q. Isn't it possible? A. It may be possible.
- Q. If that occurred, she would have to strike at a little higher angle than the one you came to the conclusion she struck at, would she not?
 - A. A higher angle than five or six points?
 - Q. I mean to say, a flatter angle?
 - A. A wider angle?
 - Q. No, a narrower angle. A. A smaller angle?
 - Q. Yes.
- A. That angle is not definitely fixed; it might be anywhere from four to six points.
- Q. If she struck say at four points, isn't it conceivable that she would strike at the point "X," move along—of course, she would strike this before she would strike the body of the vessel, would she not?
 - A. No.
- Q. Do you mean to say that the "Necanicum" would hit the "Beaver" all at once?
 - A. All at once. [200]
 - Q. How do you account for that?
- A. Well, the only way I can account for it, it is done in an instant.
- Q. I know, but didn't I understand you to say that there was a flare out on the "Beaver's" side above?
 - A. Yes.
 - Q. Would not she strike the flare first?
- A. Well, the fact that the flare didn't hold her, that she went—
- Q. (Intg.) She would strike the flare and then would go on further aft and then strike the body of the vessel, would she not?

- A. It was all done in the fraction of an instant.
- Q. I do not care about the fraction of an instant, but the succession, the physical succession was that, was it not?

 A. Yes.
- Q. I ask you whether or not, placing this on a proper angle, it does not appear that the after end of the injury on the flare above, is very much forward of the after end of the injury below?
 - A. Not very much.
- Q. How much? You can measure it, can't you, Captain? Am I fairly putting this on the after end of the injury above, as shown by your photograph?
- A. That is a little extreme, perhaps; you had better pull it together.
 - Q. There? A. That is about it.
 - Q. Have I got it on both ends there?
 - A. Yes, I think so.
- Q. Now, I am placing the dividers—is that a fair placing of it, Captain? A. I think so.
- Q. What is the difference between the after end of the injuries at the shelter deck and the after end opposite the figure "9"? A. Not any to speak of.
 - Q. What is it in distance?
 - A. I don't think that when—
 - Q. (Intg.) Judging from this picture, I mean?
- A. When I agreed with you on those measurements, I did not agree to the after part of the decking that was distorted, or the size of it, [201] because it gave way under here, and it gave way here, so I don't think there is much difference.
 - Q. Have you any question about the "Necani-

cum's" side scraping back to this square line with the dots in front of it, about abaft and along the painted load line from "9"?

- A. I don't thing I quite understand.
- Q. Have you any question about the "Necanicum's" bow now having touched the after end of the scars aft of "9" and along the painted load line?
 - A. She might not have done so.
- Q. What is your opinion about it, looking at the photograph, leaving aside your theory?
- A. My opinion is that the stem went in a little forward of that, and this is simply pulled in as a result of that blow, and that she may not have touched that.
 - Q. What does it look like to you as you look at it?
 - A. I have given you an answer.
 - Q. I mean as you look at it, not your theory?
- A. The picture, of course, being taken with a different shading, and different angle, they look slightly different.
- Q. Now, I am asking you to take this picture and tell me whether or not in your opinion there the scars show that the two vessels struck up and down on the same line all at once?
- A. At a certain point there the injury from the direct contact ceases, and then it is buckled and wrinkled, but there is not any evidence that the stem of the "Necanicum" hit where it still is wrinkled and damaged.
- Q. Why, how do you account for the fact above that in one place so much of the injury seems forward of the line and in the other place it seems, so much of

it seems, after the line. I am referring now to the line drawn through "Z" and allowing for a slightly forward rake—that is about the line, is it not, Captain, [202] from "Z" to "M"?

A. What was that question?

(The last question repeated by the reporter.)

A. It is partly due to that rake.

Q. That rake represents the position she was in in the water, does it not?

A. No, I don't think that it does.

Q. I thought you said she raked a little bit forward?

Mr. CAMPBELL.—The stem of the vessel?

Mr. DENMAN.—Yes.

Mr. CAMPBELL.—The testimony was that he thought she was pretty nearly vertical.

Mr. DENMAN.—He did not say that.

Mr. CAMPBELL.—He said in one picture it was taken at an angle; he thought it was about vertical.

Mr. DENMAN.—I think not.

Mr. CAMPBELL.—The record will show I am correct, I think.

Mr. DENMAN.—Q. Captain, you testified that the rake is fairly shown by "Exhibit G" of "4"?

A. That rake aft. It looks aft according to that. This is the reverse of that.

Q. This picture, you will see, is taken with the fence shooting up in the air, or shed shooting up in the air? A. Yes.

Q. Indicating that the position is not right, or that the picture is twisted?

- A. The picture is twisted.
- Q. That being the case, I want to find out what the true rake would be. Am I drawing a line vertical to the water-line from "Z" to "M" as the position would be. A. I don't think you are quite right.
- Q. Draw the water-line as you think it ought to be on that vessel, giving this a forward rake from the top down. A. Something like that.
- Q. Now, I am drawing this correctly, am I not? I am now putting [203] my pointers, Captain, opposite and directly back on a horizontal line from the bow in front of the letter "5," you see.
 - A. Yes.
- Q. I am taking the same compasses, and I am putting them above there, and I find that in order to bring the lower point at the same distance from the bow, that the upper point is, that I have to go some distance behind "Z," do I not?
 - A. Where was your point here?
- Q. My point here was on the line that you have placed there, as being directly under "Z"; that is correct, isn't it? A. I don't know.
- Q. Will you kindly draw on that photograph what you consider to be a line vertical to the water-line from the point "Z" down?
 - A. Which is the point "Z," right here?
 - Q. Yes.

Mr. CAMPBELL.—What do you mean by the water-line? Do you mean the water-line created by the water she is drawing, the load-line, or light load-line, or what?

Mr. DENMAN.—Do you know what draft she had on that 'day? A. No.

Mr. CAMPBELL.—I presume you are speaking of the load-line.

Mr. DENMAN.—I am speaking of what the water-level was on the day of the collision.

- Q. Now, Captain, as the vessel would lie under a normal load-line, would her bow rake aft or forward?
 - A. I think she is about vertical.
- Q. Very well, then. Now, that being the case, will you kindly draw a line from "Z" down parallel to the bow? A. Which is "Z," this here?
 - Q. Yes. Will you draw it, please?
- A. I would like to state before that, that there is a flare comes in here more than there [204] is down below, and that might distort it.
 - Q. Distort what, Captain?
 - A. Distort what you call a vertical line.
- Q. I am asking you not above a vertical line, but I mean a line equidistant at the lower and the upper end from the line of the bow.
- A. It might seem to be equidistant, and it might not seem to be equidistant.
- Q. I am talking about equidistant as you look back in a straight line.
- A. That is very difficult to do, with a thing that is not straight; this side of the ship is not straight.
- Q. What difference does that make, Captain, with regard to a line vertical down from "Z"?
 - A. I think it makes a little difference.
 - Q. What difference; how does it make a difference

(Deposition of Alfred F. Pillsbury.) optically? A. I imagine it does.

- Q. In what way could it, if you are looking squarely on the vessel?
- A. Of course, in the first place, the picture isn't in a correct vertical line.
- Q. I am not talking about that—I mean the relative position of the bottom to the top at the bow and the bottom to the top at the point of the scar.
- A. I have got an idea, whether correct or not, that the line here is not straight; maybe it will not show exactly when you measure it the same distance from the stem down here and the same distance down here; it might not be just the same distance.
- Q. Did you make any measurements at any time to correct that? A. I did not.
- Q. Did you make any measurements at any time to determine how far the lower part of the scars were aft the bow as compared with the upper scars?
 - A. No.
 - Q. You made no measurements at all?
 - A. I made some measurements. [205]
 - Q. Of those? A. No, not of those.
- Q. Who was with you when you made this examination?
- A. Mr. David Dickie was there on that day, on the drydock; Mr. Campbell was there, but I think he was not present when I was on deck.
 - Q. Did you ever go again?
- A. Mr. Evers was there, Mr. Black, and Mr. Blair; I think Mr. Gardner also and several others.
 - Q. All employed in this same purpose?

Mr. CAMPBELL.—I submit the question is not a fair question, and rather insinuating.

Mr. DENMAN.—Q. The same purpose Mr. Campbell referred to when he asked you whether you had been employed by him?

A. I don't know.

Q. Did you all take notes together?

A. The only one that I know that took notes when I was present in reference to this is Mr. Dickie.

Q. What notes did he take?

A. I could not tell you.

Q. Did you see him making any measurements?

A. Yes, I did.

Q. Did you have a scaffolding on the side of the vessel? A. Not that day.

Q. Did you see him making any measurements any other day?

A. No. I was not present with him again.

Q. Now, Captain, if these vessels struck at right angles to the deck line, outer deck line of the "Beaver," how can you account for the fact that the port anchor made an indentation at "T" and nothing appears from the starboard anchor?

A. I don't know.

Q. You can't account for it, can you?

A. I have answered.

Q. That is a fact, you cannot account for it, can you?

Mr. CAMPBELL.—The Captain never expressed the opinion that they struck at right angles.

Mr. DENMAN.—Yes, he did, and he drew a chart showing that. [206]

Mr. CAMPBELL.—I think he said from four to six points.

Mr. DENMAN.—I am speaking about at right angles at the center line of the vessel.

Mr. CAMPBELL.—The deck line of the vessel is parallel to the center line.

Mr. DENMAN.—Q. You simply can't account for it, Captain, can you? Would it not be accounted for by the fact that the angle to the upper deck line was much more acute than you have drawn it in this?

Mr. CAMPBELL.—What do you mean by the upper deck line, the curve of the sheer-strake—the outer edge of the sheer-strake?

Mr. DENMAN.—Yes, the edge of the sheer-strake at the top of the flare of the vessel.

Q. Is that the location of the sheer-strake, the top of the flare?

A. That is the upper sheer-strake, yes; the lower sheer-strake is on the main deck.

Q. Read the last question, now, Mr. Reporter.

(The question was repeated by the reporter as follows:)

"Q. Would it not be accounted for by the fact that the angle to the upper deck line was much more acute than you have drawn it in this?"

A. It may be.

Q. By "this," I am referring now to the diagram "1" on an exhibit which I will call "Claimant's Exhibit 'B,' Pillsbury"; would it not be accounted for possibly by the two vessels having approached at the angle marked as "T" in "2"? A. It might.

Q. Now, presuming that they approached at the angle marked "T," I ask you why, if the "Necanicum" was dead in the water and the "Beaver" were approaching her at a righ rate of speed, the two vessels might not come together and the "Necanicum" enter the [207] "Beaver" as there shown?

A. I think not.

Q. Why?

A. Because if the "Necanicum" were dead in the water and the "Beaver" hit her, the damage would be to the "Necanicum," with some slight indentation of the "Beaver."

Q. Why?

A. Because it would not be possible for the "Necanicum" to penetrate the side of the "Beaver" if she were dead in the water.

Q. Suppose the "Beaver" pushes herself onto the bow of the "Necanicum"? A. Couldn't do it.

Q. Have you ever seen it tried?

A. No. My judgment would tell me that it could not be done.

Q. Why? A. It is not possible.

Q. Have you ever run an automobile, or seen one run onto a telegraph pole?

A. No, I don't want to.

Q. Have you ever seen the side of a vessel mashed in by running against the corner of a dock?

A. Not to any extent, no. I have seen quite a number of collisions.

Q. What sort of collisions?

A. All kinds of collisions, with wharves and collisions between vessels.

- Q. What collisions, for instance, between vessels, have you ever seen?
- A. Well, I have seen the "Pleiades" and "Thomas Wand."
- Q. I am talking about if you have ever seen the vessels come together?
 - A. I don't know that I have.
- Q. What is the reason—what mechanical reason or physical reason is there why if one vessel is dead in the water and lying at an acute angle to the other, and the other rams, jambs her side, her bow into it, that it won't be just as successful in not pushing the bow in as if the force came from the other angle. What difference does it make?
- A. Well, if it were as you state, [208] the "Beaver" would push the other one away before it would penetrate like that.
 - Q. If it had the same impact?
- A. It would not have; it is the speed multiplied by the weight that causes it.
- Q. All right, take the speed of the "Beaver" multiplied by the weight.
 - A. The speed of the "Necanicum."
- Q. Why not the speed of the "Beaver"? Can't the on-coming vessel, with her momentum, impinge herself on a sharp bow in the same way that a sharp bow could on this vessel in the other position?
 - A. I don't think so.
 - Q. Why not?
 - A. Because there is one force moving, in that case. Mr. CAMPBELL.—That is, with an object in the

water, you are speaking of, that is movable.

Mr. DENMAN.—In either case the bow is movable.

A. In the case you speak of, there would be one stationary and the other would be moving.

Q. But it is the force at the point of impact that makes the penetration, isn't it?

A. Yes. But I should think—

Q. But suppose the "Beaver"—

Mr. CAMPBELL.—Give the witness a chance to answer. I think your attitude is most unfair in shutting him off every time he starts an answer, simply because the Court isn't present, and I shall have to appeal to the Commissioner who is taking the deposition, if you do not give him an opportunity to answer.

Mr. DENMAN.—That may be. He can protect himself pretty well—

Mr. CAMPBELL.-I will ask you, Mr. Commissioner, to give the witness an opportunity to finish his answers.

The COMMISSIONER.—It is the proper way, to get a full answer into the record. [209]

Mr. DENMAN.—That is very true, but in those cases, I have started to ask a question at the same time that he has started to give a portion of his answer, when I presumed he had finished it.

The COMMISSIONER.—Captain Pillsbury has been a little hesitant in his answers, and your questions have come in-I would not say it was intentional at all—but you are talking right along very rapidly, and the witness here is a little slow at times,

hesitates about his answer, and does not get them in, and shakes his head. A better way to do is to get the answers in full, because the Court is not present, and we want the deposition to be as complete as it is possible to have it under the circumstances.

Mr. DENMAN.—Q. Now, Captain, your testimony on this is purely theoretical, is it? You have never seen vessels coming together in this way?

A. I should think it would be somewhat practical from the number of cases that I have seen, and dealt with, in the last eleven years.

Q. Have you ever had a case of a vessel going at 15 knots against a vessel lying dead in the water, the bow of the vessel lying dead in the water? A. No.

Q. You don't know, then, what that high momentum of a vessel would do in impacting on the sharp bow of the vessel lying dead in the water?

A. Not from the cases I have seen.

Q. Do you know of any case that you have had, that you have studied apart from this? A. No.

Q. Have you ever had a case where, to your knowledge, the oncoming vessel was impacted with her momentum at ten knots? A. No.

Q. On a vessel lying dead in the water? A. No.

Q. Can you give any reason why the oncoming vessel, with her momentum impacting on a sharp bow lying dead in the water will not drive it in in the same way that the other vessel, coming on [210] with the same momentum, would enter it?

A. Only my judgment.

Q. What is the reason on which your judgment is based?

A. I think I have stated once or twice that a blow of that kind would only be caused by the vessel inflicting it having a large headway.

Q. I know you have said that, but you have not given any reason for it. This is a rational procedure. It is not a matter of guesswork. Why should it make any difference if at the point of contact the momentum comes from one rather than the other; what difference will it make?

A. Well, in my judgment, it would be entirely different; the nature of the damage would be quite different.

Q. You have never had any case to compare it with, have you?

A. No. I am drawing on my judgment.

Q. What is it based upon?

A. The different collision cases I have seen.

Q. What collision case have you had analagous to it?

A. I have stated I have not any exactly to compare with the one that you have stated.

Q. Then give me any single instance in your experience which leads you to believe that when an object comes against another at a sharp angle, say of 45 degrees, the momentum of the oncoming object to the impinging one, to the one that cuts in?

A. I don't see how it could-

Mr. CAMPBELL.—One moment, Captain. We object to the question as not containing a correct statement of the physical facts in this case, for the reason that it does not take into consideration the

difference in weight of the "Beaver" and the "Necanicum," and does not take into consideration the fact that the "Necanicum" was afloat on the water, of a heavy draft aft and light forward. [211]

Mr. DENMAN.—Q. Captain, have you any idea how long it would take to stop the "Necanicum"?

- A. From full speed ahead?
- Q. Yes. Have you ever tried it with a schooner of that type?
- A. Well, I have tried it with different vessels. I do not want to say positively. I would say in from three to four minutes.
- Q. That is based upon your judgment in other cases? A. Yes.
- Q. What are you assuming her headway now to be? A. Eight or nine knots.
- Q. You think that a vessel of that type would stop between three and four minutes? A. Yes.
 - Q. That is based on your experience, Captain?
 - A. Yes.
- Q. How long would it take to stop the "Beaver" —do you know the experiments that were made in stopping the "Beaver"?
 - A. No. If I did, I don't remember.
- Q. How long would it take to stop the "Beaver" going at 15 knots, say?
- A. I should think in the neighborhood of five minutes.
- Q. Now, what ground do you think she would cover before she would stop? A. Which vessel?
 - Q. The "Beaver"? A. I think about 2,000 feet.

- Q. About 2,000 feet? A. Yes.
- Q. Have you ever tried it?
- A. I have tried it on vessels, yes, but I could not tell you offhand.
- Q. Have you ever tried it on any vessel that was making 15 knots and of about the same horse-power as the "Beaver"?
- A. Well, I think the "Peru" had pretty nearly the same—she was a 15-knot ship, and she had about the same horse-power, I think.
- Q. Did you ever measure the distance on the "Peru"?
 - A. I have, but I could not tell you now.
 - Q. Might it not have been as much as 3,000 feet?
 - A. It might have been. [212]
- Q. Between 3,000 and 2,000, you would not have any choice in your memory, would you? A. No.
- Q. Which way would the "Necanicum" swing if she was going astern from full speed ahead to full speed astern, in reaching about a velocity of, you say, 5 knots, you have calculated she was going?
- A. Well, I made that answer, yes. I don't know just what she was going; but at considerable speed.
- Q. Which way would her bow turn as she went ahead but on diminished speed?
 - A. She would turn from port to starboard.
 - Q. From port to starboard?
- A. I presume under these circumstances, with a moderate breeze.
 - Q. Presume there is no breeze at all?
 - A. That is what I mean.

- Q. If the breeze were aft, the tendency would be to turn less?
- A. If there was a moderate breeze, it would not affect it very much; a strong breeze might affect her considerably.
- Q. Then, if the "Necanicum" was proceeding at about five knots speed at the time of the collision and she must have been reversing from an eight-knot speed—presuming that she was. A. Yes.
- Q. She would be turning to her starboard, would she not? A. Yes.
 - Q. In the water? A. Yes.
- Q. I now offer you "Libelant's Exhibit 2, Pillsbury," and ask you whether, if the "Necanicum" were turning on a helm to her starboard, and proceeding at the rate of five knots, and the "Beaver" were turning to her starboard and proceeded at a rate of 10 knots, whether the two vessels ever came together as drawn here?

 A. No.
- Q. Now, I ask you, if the "Beaver" were proceeding at the rate of 5 knots and the "Necanicum" was proceeding at the rate of 8 knots, and the "Beaver" was turning to her starboard, and the [213] "Necanicum" were going straight ahead, whether they could come together?
 - A. Not at the place—
 - Q. (Intg.) Where the collision occurred?
 - A. Not at the point where the collision occurred.
- Q. As a matter of fact, they would be somewhere abaft, Captain?
 - A. It would be somewhere further aft.

- Q. Very much further aft, would it not be?
- A. Yes.
- Q. Might entirely miss her, might it not?
- A. I don't know. I would have to measure.
- Q. It would be very much further aft?
- A. Quite a considerable distance, yes.
- Q. Now, the "Necanicum," in order to strike the "Beaver" at all 12 feet abaft the bow from the position in which she is shown in this "Libelant's Exhibit 2, Pillsbury," would be obliged to turn considerably to her port, would she not? A. Yes.
- Q. Presuming both of them were going at a five-knot speed. A. Yes.
- Q. She would have to turn a great deal more, would she not, if the "Beaver" were going at 10-knots speed? A. Yes.
- Q. And she would strike, instead of at right angles, at an acute angle backwards, would she not—if the "Beaver" were turning to the starboard, and the "Necanicum" were turning to port? A. Yes.
- Q. So that this picture here does not at all fit into your theory. Presuming the picture to be correct now, it does not fit in at all with your theory of the motion of the vessels at the time they struck.
- A. The diagram would fit in very well if the distance of the "Necanicum" was further away.
- Q. What difference would it make if the angles were the same?

Mr. CAMPBELL.—Which way, further ahead?

A. Further ahead.

Mr. DENMAN.-Q. What difference would it

(Deposition of Alfred F. Pillsbury.) make if the angles were the same?

- A. I think it would fit in very well. [214]
- Q. Which way would the "Necanicum" have to be turning?
- A. If the "Necanicum" was on the same bearing, or off here somewhere, the "Necanicum" came up turning on a port wheel.
- Q. She would have to be coming around to starboard all the time, wouldn't she?
- A. She would be turning on the port wheel while the "Beaver" would be turning, to come together.
- Q. In other words, the "Beaver" turns sharply to her starboard, the "Necanicum" would have to be turning sharply to her starboard in order to come together at the angle you speak of?

 A. No.
- Q. What would the "Necanicum" have to be doing?
- A. The "Necanicum" would have to be going ahead; if the "Necanicum" was off here, twice that distance or more—
- Mr. CAMPBELL.—(Intg.) By "off here," you refer to a distance beyond the top of the paper?
 - A. Yes.
 - Q. Parallel to the position shown on the paper?
 - A. Yes.
- Mr. DENMAN.—Q. Suppose the "Necanicum" continued straight ahead and the "Beaver" turned sharply to starboard, as a matter of fact, the "Necanicum" is now at an higher angle than you place her, is she not? A. In what way?
 - Q. At a higher angle than you placed her at the

(Deposition of Alfred F. Pillsbury.)
moment of impact? A. On this diagram?

Q. Yes.

A. I think it corresponds very closely.

Q. If the "Beaver" were turning to starboard sharply, the "Necanicum" would not strike if she went straight ahead at the angle that you have described?

A. Not unless she herself were turning on a port wheel.

Mr. CAMPBELL.—Q. By "she," you mean the "Necanicum"?

A. Yes.

Mr. DENMAN.—If she were turning on a port wheel?

A. If she were.

Q. Now, Captain, I want you to draw for me a line which, in your [215] opinion, as far as this picture indicates, would be perpendicular to the water line from the letter "Z." A. Which water-line?

Q. As the position would be under normal draft.

A. I don't know what her normal draft is.

Q. How, then, could you judge of the angle of the blow to that vessel, if you did not know what angle the bow of the "Beaver" had?

A. Why, from the general character of the injury.

Q. Well, how? How could you judge the angle by the general character of the injury? What would indicate it? A. The indent.

Q. How does the indent indicate it? Do not give a conclusion, I want the reason.

Mr. CAMPBELL.—That is not a conclusion, that is a statement of fact.

- A. Mr. Denman, I could not go to work now and analyze all the motives that made me come to the opinion that that blow was caused from an angle of 5 to 6 degrees, and I don't know, and I did not know then, that it made the slightest difference which way the angle of the blow occurred. I simply formed an opinion, and that was my opinion, without any idea as to how it would affect either case.
- Q. I am not talking about that; I am not questioning about that. I want to get at your mental process, which I think was erroneous. I want to prove it, if I can; if I cannot, you have established your theory.
- A. It is pretty hard to tell you in detail how I analyzed that.
- Q. Were you trying at the time to discover where the vessel first struck? A. Yes.
- Q. And you took no measurements to see how far back the scars were from the bottom as distinguished from the top?
- A. I think I saw enough of the injury to form that opinion. [216]
- Q. Well, I am asking you, did you take any measurements?
- A. I took no measurements on the outside, except on the upper deck.
 - Q. On the upper deck? A. Yes.
 - Q. What measurements did you take there?
 - A. I took the measurements, I think, in a fore-

(Deposition of Alfred F. Pillsbury.) and-aft line from the stem.

- Q. Coming back again to the point "X": What is there behind, abaft of "X" that would make—what do you call this?

 A. The molding.
- Q. (Continuing.) This molding bulge out and curve in at "X"? A. The pressure.
- Mr. CAMPBELL.—Q. Which side does it bulge out?

Mr. DENMAN.—It bulges out aft of "X."

- A. The pressure of the metal caused by the blow and the distortion.
- Q. What metal would press it out and what metal would make that curve in at "X"?
 - A. The whole metal in connection with that.
 - Q. What? The whole metal is indefinite.
 - A. I could not tell you more in detail.
 - Q. Do you know? A. I think I know.
- Q. What is there—there has got to be some force to press out the molding?
- A. There is something pressed out here. You take that ruler, and you press in, and something is coming out, and that is what has happened, in my opinion.
- Q. But how do you account for the fact that the curve-in comes before an out-curve, as you are moving from "X" to "Z"?
- A. Because the vessels are tied together, in different ways; it shows that at another one it is pulled in.
 - Q. Did you examine it to see at that time?
 - A. Yes, I did.
 - Q. What did you see there?

- A. I saw what you see now.
- Q. What did you see inside in the tying?
- A. I saw a mass of twisted, bent steel and so forth, in all sorts of shapes. [217]
 - Q. That was about all, was it not?
 - A. I saw quite a lot of that.
- Q. Would you say it was impossible for the vessel to have struck, scraped along, pressed along until finally she got at rest here at "Z," and at the same time she struck the body of the vessel below—do you say that is impossible?
- A. I do not say it is impossible. It is not my opinion.
 - Q. What is the objection to it?
- A. I don't know as there is any objection, but I do not want to state anything I do not think is so.
- Q. Why don't you think it is so. What is the objection to that theory that she struck there?
 - A. Because I have the other one.
- Q. That may be, but what is the objection to the theory. If those physical facts are present to the eye, there is some way of accounting for it?
- A. I have stated that I cannot tell you—you cannot pick out one thing on the photograph and say that was so and so and that was so and so.
- Q. What did you put the photograph in evidence for?

Mr. CAMPBELL.—Counsel does that.

Mr. DENMAN.—Why did you take them?

A. To give a general idea, I suppose. I consider them instructive as giving a general idea of the (Deposition of Alfred F. Pillsbury.) character of the damage.

- Q. Now, I ask you whether or not it is true that from "X"—is that forward end of the injuries at that point here? A. I could not tell you.
 - Q. Just look at it. A. Which?
 - Q. This point.
- A. I don't know; it may be. It looks to me as if it was more than that; that looks as though it was pulled in.
 - Q. I am talking about this point.
 - A. I could not tell you.
- Q. I will ask you this, Captain: Over here was there anything [218] pulled in there as indicated by the photograph?
 - A. Where? Where there is a point?
 - Q. There (pointing).
 - A. I could not tell you within a few inches.
 - Q. Let me see your report, will you, Captain?
 - A. It is there.

Mr. CAMPBELL.—It is.

Mr. DENMAN.—Q. If the "Beaver" has, as you say, a flare upward, how much is that flare out, Captain?

- A. I don't know in inches.
- Q. In feet, isn't it?
- A. I don't know the exact measurement.
- Q. It would be in feet, wouldn't it?
- A. It would be measured from the fine point of the ship well down.
- Q. How much would you say, Captain, looking at it here, the flare was?

- A. From what point, Mr. Denman?
- Q. Well, from, say, the point marked "19" at a line directly up and down from the after end of the hawse-pipe.

 A. That is on the half side?
 - Q. Yes.
- A. That is on the half width, on one side only, of course.
 - Q. Yes, one-half width.
 - A. Approximately one foot.
- Q. As a matter of fact, isn't it about 2 feet and a half, Captain?
- A. I would not think so, at that point; something over a foot, perhaps.
- Q. Let me ask you: Will that aid you in determining the amount of the flare—I am offering to you "J" of Exhibit 4?
- A. No, because this is on the shelter deck, and you are referring to the hawse-pipe.
 - Q. I mean up to the shelter deck.
 - A. I understood you to say up to the hawse-pipe.
 - Q. A line drawn through the hawse-pipe?
- A. Oh, yes; it is approximately [219] over two feet, I should imagine.
- Q. Now, that being the case, if the "Beaver" and the "Necanicum" came on at the angle you have described, what part of the "Beaver" would the "Necanicum" strike first?
- A. She would strike the upper part of the "Beaver."
- Q. Had you ever made any calculations to determine the interval of time between striking the upper

(Deposition of Alfred F. Pillsbury.) and lower part? A. No, I have not.

- Q. Have you ever thought of that before, Captain, in connection with this case?
 - A. I don't know that I have.
- Q. Did you ever make any investigations to determine why, although under your theory the two vessels came together at right angles to the outer line of the shelter deck of the "Beaver," the starboard anchor of the "Necanicum" did not enter into the "Beaver"?
- A. Well, I had an opinion it was a little forward, struck a little forward of a right angle; that was the reason.
- Q. Then you don't think it struck the outer line of the shelter deck?
- A. I think that five or six points would be a little forward of the right angle.
- Q. Then your five or six points was the angle of the side of the vessel, and not to the center line of the vessel.
- A. I don't mean that. Five or six points was the angle of the center line.
- Q. That would make it a good deal more than right angles to the side of the vessel, would it not?
- A. No, five points would not; I think five points would make it less, except possibly on the shelter deck.
 - Q. I am talking about the shelter deck.
- A. It would probably be about right angles on the shelter deck. I considered the whole structure, not the shelter deck.

- Q. Of course, to determine at what angle they struck, and what [220] happened when they struck, you would have to consider not only the whole structure, but each part of the structure, would you not? A. I should think so.
- Q. What is the flare, Captain, of the vessel between the point marked "T" and the point marked "X"?
 - A. Which is "T"?
 - Q. "T" is there, and the "X" is above.
- A. I think it is about—maybe I have the measurement.
- Q. Is the hawse-pipe below or above the main deck?
- A. I think it is above the main deck. I think there is the indent—I can't tell you about that, I haven't the measurement.
- Q. May I take a look at your book, please, Captain? A. Yes.
- Q. I notice here, Captain, that you say the following: "Had the 'Necanicum' hit the 'Beaver' on a more fore and aft position, the paint would be scratched all away to the 'Beaver's' stem, whereas the last four feet between the stem and indent is not scratched." How about the first six feet between the stem and the indent?
- Mr. CAMPBELL.—That is beginning with the stem? A. No, with the break.
- Mr. DENMAN.—Q. It must have been scratched, according to this note.
 - A. I suppose I referred to the anchor that is

(Deposition of Alfred F. Pillsbury.) scratching, but that anchor is out about six feet from the stem.

- Q. Would you call that scratching paint? Is that anchor indentation fairly described as scratching paint—on "A" of "Libelant's Exhibit 4," is the anchor indentation at "T" what you would call scratching paint? A. No, that is an indent.
- Q. Now, when you say here that the paint is not scratched for the last four feet, what about the paint being scratched for the other six. It must have been scratched, must it not? [221]
 - A. It might have been.
- Q. Would you make any other note in your book than this if it had not been scratched?
 - A. No, I don't know that I would.
- Q. The whole reasoning of this is that she scraped along the side for six feet, and scratched the paint, but had not scratched the first four feet from the bow aft; that is it, isn't it?
 - A. I don't know that it is.
 - Q. Isn't that the reasonable interpretation of it?
 - A. It may be.
 - Q. Isn't it a fairly reasonable interpretation of it?
- A. There might be another. It might be that the pulling in of those plates would tear the paint off.
 - Q. Would you call that scratching?
- A. I hardly expect I would; still, the paint would be all disturbed there where they are bent in.
- Q. But you are here trying to describe the motion of the ship, aren't you: "Had the 'Necanicum' hit the 'Beaver' on a more fore and aft position, the

(Deposition of Alfred F. Pillsbury.) paint would be scratched all the way to the 'Beaver's' stem."

A. I could interpret that this way: If she had hit her on a more fore and aft position, that with the round of that bow, it would have come up against the side of the "Beaver" in parts that were not disturbed by the pulling in of the plate.

Q. But you were not using the term "scratching" in connection with that.

A. I might or might not. I think the idea of putting it in that way was to show that had she come fore and aft more the paint all the way forward would have been disturbed.

Q. Now, Captain, just look at the angle shown in this drawing that you have made in your note-book of November 1, 1913. It would appear that the "Beaver" had run onto the "Necanicum" at rather a high angle, would it not, or rather a flat angle? [222]

A. That the "Beaver" had run on to the "Necanicum"?

Q. That the two vessels had come together then at rather a flat angle.

A. Rather a high angle,—what is your idea of a high angle?

Q. I mean to say,—I am marking now on this exhibit that has not been offered in evidence yet, unless you are willing to let it go in.

A. I would rather it not go in; I would rather detach the pages and number them.

Q. I would like to have them put in.

Mr. CAMPBELL.—If you will take the book, Captain, and pin together the leaves which refer to this matter, may we extract them from the book?

A. Yes.

Mr. DENMAN.—Q. How many reports of this did you write up, Captain?

A. I don't remember; three or four, I don't remember.

Q. Where are the others?

A. I think Mr. Campbell has them all.

Mr. DENMAN.—Will you let me have the others, Mr. Campbell?

Q. You mean copies of different reports?

A. Just copies of that one report.

Q. Did you write up a preliminary report, and then a second one? A. No, just that one.

Q. That is the only report that has ever been made?

A. Yes.

Mr. CAMPBELL.—You mean that you had several copies made of the same report? A. Yes.

Mr. DENMAN.—I didn't know whether he had a preliminary report and a subsequent one as he went along. A. No.

Mr. CAMPBELL.—I ask that counsel hasten the deposition as much as possible, because he appreciates that the Captain has got to leave on the 8:20 train, and it is now after six o'clock. [223] I do not want to think that you are doing it on purpose, but I think you are unduly prolonging the examination; you appreciate that the Captain has got to go away. It places me in rather an embarrassing posi-

fion to so embarrass the Captain in his matters.

Mr. DENMAN.—I am very sorry for that. We are trying a lawsuit, and we want to get the evidence in.

Mr. CAMPBELL.—I appreciate that, but I would like you to hasten it as much as possible.

The WITNESS.—I understand the situation.

Mr. DENMAN.—I want to get you off if I can.

Mr. CAMPBELL.—How soon, Captain, do you have to leave?

A. In twenty or twenty-five minutes.

Mr. DENMAN.—Q. You must leave in twenty or twenty-five minutes? A. Yes.

Q. Captain, if as indicated in your note there, the "Necanicum" had scraped along your bow, the "Beaver's" bow for a distance of six or eight feet before she actually engaged deeper, to the deepest point, and had pressed the "Beaver" in in the way as appears on page 4 of your notes, and the "Beaver" were going ahead, what would it do to the course of the "Necanicum"—what way would it turn the head of the "Necanicum"?

A. It would turn the head of the "Necanicum" toward the bow of the "Beaver."

- Q. Which way would it turn it? A. To port.
- Q. Turn it to port? A. Yes.
- Q. Now, if the "Beaver" and the "Necanicum" were, at the end of a minute or half a minute, say a minute after the collision, practically on a parallel course, during which time the "Necanicum" was reversing and turning toward her starboard, you would

expect to find a very considerable turning force to have been [224] applied to the bow of the "Necanicum" to bring them around parallel, would you not? A. Yes.

- Q. No force in the "Necanicum" would contribute to that turning, would it? It would have to be the force of the "Beaver," would it not?
 - A. Yes, I think so.
- Q. Where would the "Necanicum" pivot where she was turned in that way? A. On the heel.
- Q. That does not mean exactly on the heel, itself? Where would the point be, presuming she had a draft of five feet forward and 16 feet aft—where would the pivoting point come?
 - A. Pretty close to the stern.
- Q. It would be about under the engines, would it not? A. About there.
- Q. Would that tend to confirm your theory that the "Beaver" was making ten knots?
- A. Thereabouts, a good speed; it might have been eight, it might have been twelve.

Mr. DENMAN.—I offer the Captain's notes in evidence as "Claimant's Exhibit 'C, Pillsbury."

Mr. CAMPBELL.—No objection.

Mr. DENMAN.—Q. Page 4 of your Exhibit "C" represents approximately the injury as you found it?

- A. Yes.
- Q. And the angle? A. Yes.
- Q. Is there any photograph of all these that were taken that indicates that angle?
 - A. I did not take these.

- Q. I know that, but I ask you if any of them does.
- A. This one here would.
- Q. That would?
- A. Yes, "H" on "Libelant's Exhibit 4."
- Q. In other words, in that, the deeper part of the wound is at the after end of the wound?
 - A. Near the after part of the wound.
- Q. That is correct, isn't it, Captain? A. Yes. [225]
- Q. How does that indicate in the photograph that it is deeper at the after part of the wound?
- A. These photographs, owing to the light, do not bring it out.
 - Q. Don't bring it out? A. No.
- Q. There is no photograph in all these that brings that out, is there? A. I think not.
 - Q. Did you take any that brings it out?
- A. Well, that brings it out pretty well, "Pillsbury Exhibit 1."
- Q. Does that not show very much the face of the after side than it does the fore side?
 - A. I don't know that it does.
 - Q. Take your calipers and take a fair sight of that.
 - A. It is sharper owing to the angle it was taken.
- Q. Exactly, but as you look at it, it looks as though the after portion of the scar was very much larger than the fore portion, as you look at it? A. Yes.
- Q. Is there any other picture that you know of that has been taken?

 A. Not unless I have it here.
 - Q. Look at them.
 - A. Owing to the light, they would not come out;

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(Deposition of Alfred F. Pillsbury.)

there were several taken there on that angle that did not come out, that did not show the details.

- Q. Is there any taken looking from aft forward?
- A. I do not see any. Some taken at broadside.

Mr. CAMPBELL.—I call your attention to the photograph which was taken from the ship's foretop. See whether that answers.

Mr. DENMAN.—No.

Mr. CAMPBELL.—Let the Captain answer, and not Mr. Denman.

A. There is one taken from the mast.

Mr. DENMAN.—Q. That shows the after end of the wound to be very much larger than the other end, does it not, from that position?

- A. From that position; yes. [226]
- Q. That is correct, isn't it?
- A. As it shows here?
- Q. Yes. A. Yes.
- Q. Is there any picture taken from aft the wound on the outside, to show the relative length of the fore portion of the wound as compared to the after portion?

 A. I don't know that there is.
 - Q. None taken?
 - A. If there was, they are all here.
 - Q. You don't know of any being taken, do you?

Mr. CAMPBELL.—Does it bring it out in detail other than as shown on the large photograph "Exhibit 4" and "Pillsbury Exhibit 1"?

Mr. DENMAN.—Both of those were taken from a spot forward. Neither was taken from aft of the wound. Q. Now, I am asking you whether you re-

call any photograph that was taken aft of the wound on the outside. A. I don't recall it at this time.

- Q. Now, Captain, I am showing you a picture taken by you, which I will mark "Exhibit 'D,' Pillsbury," and I recall to your mind the remarks you have made in your notes concerning the scraping of paint, and ask you whether it is not possible that you meant by that the scraping of paint from what appears to be the forward part of the scar under the hawse-pipe back to the center of the wound? A. Possibly.
 - Q. Quite likely, isn't it, Captain?
 - A. Well, I would say it was possible.
- Q. And the same thing may be true from what appears to be the first indentation above, just above a little bit forward of the anchor wound, back to the center of the wound itself? A. I don't think so.
- Q. Now, I ask you whether the scraped appearance of the paint from "X" to "Z" may not be the scratching that you refer to?
 - A. It is possible. [227]
- Q. And that you thought of that at that time as being scratched?

 A. That is possible; it may be.
- Q. You think it is possible, too, that the anchor projected out far enough to engage the "Beaver" first? A. No, not first.
- Q. What makes you say that? Did you make any measurements of the anchor?
 - A. Well, that is my judgment.
- Q. Well, I say, did you make any measurements of the anchor on the "Necanicum"?
- A. No. I think the point of the stem made the first contact.

- Q. By the way, how much was taken off the stem?
- A. Practically all.
- Q. When you say practically all, what do you mean by that %
 - A. It was practically smashed right in to the end.
 - Q. Straight back? A. Yes.

Mr. CAMPBELL.—Captain, due to the fact that there is a great lapse of time running between each question and the time is so close for you to go, I want you to say when you have got to go, and I will ask the Commissioner to adjourn the deposition and take my chance of having the Court permit me to complete it after your return following the conclusion of the case.

The WITNESS.—I think I ought to leave not later than ten minutes from this time.

Mr. CAMPBELL,—I do not want to think that you are deliberately prolonging this examination, but you are prolonging it with very slow interrogations.

Mr. DENMAN.—That may be, Mr. Campbell, but—

Mr. CAMPBELL.—I trust that I won't be forced to feel that way, but you knew when I called you at two o'clock that the Captain had to get away at 8:30, and you have been two hours in your cross-examinatin now. [228]

Mr. DENMAN.—I think if I had him on the stand, I am quite sure I would be a day. I would also call to your attention, despite your petty remarks that you have made, on account of the absence of your

dinner, probably, that I desired to have the examination begin earlier to-day; I offered to go on at 3:00 o'clock to accommodate you, and I told you it would be an accommodation to me at the same time.

The COMMISSIONER.—We are losing this time.

Mr. DENMAN.—But my friend has put things into the record that are rather offensive.

Mr. CAMPBELL.—They are not intended to be offensive at all.

Mr. DENMAN.—There is no use of repeating something that is offensive, if you don't mean it.

Mr. CAMPBELL.—If you mean to be sharp, whatever I say I mean. It is not intended as anything offensive at all, but the Captain is anxious to get away, and it is embarrassing to me to have him delayed.

Mr. DENMAN.—I am very sorry for that, but I intend to work out in my own mind the various movements of these vessels with reference to the captain's testimony.

Q. Now, as I understand it, Captain, you say the bow of the "Necanicum" was smashed square back.

Mr. CAMPBELL.—He hasn't so testified, at all.

A. I say the stem was practically destroyed.

Mr. DENMAN.—Q. It was mashed right back. I want your recollection without the exhibits, or without any other suggestion. A. Yes.

Mr. CAMPBELL.—I suggest that counsel is putting something into the witness' mouth that he has not, said, that it was mashed square back. [229]

Mr. DENMAN.—Q. You said it was?

A. I said it was practically destroyed, splintered and mashed up.

- Q. You also said it was mashed square back.
- A. If I did, I suppose it is in the record.
- Q. Is it so? I mean to say, is that your memory of it now?
- A. Well, I said it was practically broken up all the way.
- Q. I am asking you as to the direction: Was it broken to one side?
 - A. Broken to port, pushed to port.
 - Q. It was turned to port? A. Yes.
 - Q. That is scraped over toward the port side?
 - A. Bent over to port.
 - Q. It was scaped over to the port, was it not?
 - A. I would say bent.
- Q. I ask you whether or not in fact of the condition of the bow in Exhibit "C" of claimant, you will deny that it was not scraped to the port side?
- A. You and I may mean the same thing. I say bent and stick to it.
- Q. But it was gradually torn out and crushed in that direction?
- A. Not gradually crushed, but it was mashed and bent over to port.
- Q. If this was a single impact, a single direct indrive, how would you account for that turning over to port.
- A. That is just the way I do account for it, by going in with a crushing blow and breaking it up, and the forward movement of the "Beaver" twisting it

(Deposition of Alfred F. Pillsbury.) around at the same time.

- Q. But if it went directly into the "V" and did not scrape back at all to port, how would you get that effect?
- A. As I say, the forward movement of the "Beaver" at the same time she was hitting.
- Q. Well, she must have scraped along the side of the "Beaver," [230] must she not?
 - A. No, she did not scrape alongside.
- Q. How, then, would the forward movement of the "Beaver" tear that back unless it engaged the "Necanicum" as it moved forward and scraped it back toward the port?
- A. It didn't scrape it back. When the "Necanicum" hit the "Beaver" with a good deal of way, the "Beaver" was also going with a good deal of way, the two forces broke it up and turned it to port.
- Q. Looking at this injury, would you say that the injury could or could not be inflicted with a vessel lying still and the other vessel striking her at 15 knots? A. Decidedly could not be.
- Mr. CAMPBELL.—That is referring to what exhibit?
- A. It could not be so splintered up if she was lying still.
- Mr. CAMPBELL.—That is referring to Claimant's Exhibit "C"? A. Yes.
- Mr. DENMAN.—Q. Suppose she was going at 30 knots?
- A. I don't know what would happen. I have never seen a vessel making 30 knots.

- Q. But you have said you never saw a collision with a vessel going 15 knots and the other vessel lying still?
- A. Well, I have seen vessels that were going 10 or 12 knots or more.
- Q. Have you ever seen it where there was a bow like that before? A. No.
- Q. You don't believe, then, if the "Beaver" struck that going 15 knots, that it would turn the bow over like that, if she was lying dead in the water?.
 - A. No.
- Q. Your theory is based on some notion that an object cannot drive itself on to another as fast as the other can drive it into that object? [231]
- A. In reference to that condition there, my opinion is based on that condition—splintering that wood. If the "Beaver" alone had headway, it would not have been so splintered up.
 - Q. Why wouldn't it be?
 - A. It would be broken in one or two pieces.
- Q. I see you do not understand my question. We will have to put this over, Mr. Campbell. Suppose that the "Necanicum" is lying at rest here like that, and the "Beaver" drives across her bow at 15 knots.
- A. Yes, she would simply turn the stem over and it would not be splintered up.
- Q. Suppose in doing that, as she does it, she engages, presses in the side of the "Beaver" and she catches, so that it gets at an angle like that marked at the point "T" and forces the "Necanicum" back with a great pressing motion of her momentum at 15

knots ahead, would you then say she would not mash?

- A. Yes.
- Q. That is very satisfactory. I will offer this in evidence and ask to have it marked "Claimant's Exhibit 'E,' Pillsbury."
- Q. Now, the exhibit that you have just given your testimony on, Captain, is this "Claimant's Exhibit 'E,' Pillsbury," that I have before me, isn't it?
 - A. Yes.
- Q. And it is your contention that if the "Beaver" coming down at 15 knots should strike the "Necanicum" and engage her bow in a "V" formed by the formation of every portion of the structure of the "Beaver" that the mashing effect of the forward movement of the "Beaver" could not splinter it up in the finest splinters?

Mr. CAMPBELL.—What would not splinter it up?

Mr. DENMAN.—Q. The stem of the "'Necanicum''?

- A. Well, it was also stated that the "Necanicum" was stopped, was it not. [232]
- Q. Presuming she is stopped? A. Yes.
- Q. And the momentum comes from the other vessel? A. Yes.

Redirect Examination.

Mr. CAMPBELL.—Q. Is the stem of the "Necanicum" vertical? A. No.

Q. Where is the furthest point forward, at the top of the stem or at the bottom?

A. Well, in her light condition, it was not vertical;

it might be with the vessel loaded within a foot or two of an even keel, but in the condition she was in, the stem raked up so that the top of the stem was a foot back of the part lower down, say 12 or 15 feet lower down. I don't remember now.

- Q. Now, referring to the drawing made on your notes, I ask you whether or not you have attempted to draw the lines with absolute accuracy?
 - A. As they appeared to me.
- Q. Does it or does it not follow in your judgment that all the paint which was off the iron work on the "Beaver" in and about her damage was due to scraping by the "Necanicum" against the iron?
 - A. No.
 - Q. How else could the paint have been removed?
- A. By the buckling and banding of the painted metal.
- Q. Is or is not that a common condition with metal that is under a bending strain?
 - A. That is very common.
- Q. What can you say of the fullness of the bows, the comparative fullness of the bow of the "Necanicum" to that of the "Beaver"?

 A. It is fuller.
- Q. If the angle of approach had been more acute than that which you have drawn, taking into consideration the full bow of the "Necanicum," I ask you whether or not in your judgment the damage which would have been inflicted upon the "Beaver" in a collision [233] with the "Necanicum" when the later would have been dead, would have been of the character which the "Beaver" did receive?

A. If it had been much more acute they would have simply rubbed by.

Q. Would the same character of damage have been done to the "Beaver"?

A. What do you mean by much more acute?,

Q. I mean if considering they were approaching at the angle of impact which you gave, the "Necanicum" was more nearly to a parallel line?

A. One point would not have made much difference, I do not believe. None of us know exactly whether it was 4 or 6 points; but if it had between 2 and 3 points, I think they would have rubbed by.

Q. As the angle of impact lessens, what effect would the fullness of the bow of the "Necanicum" have upon the tendency of the two vessels to simply scrape along each other?

A. That would have a tendency—the tops, the bows of each vessel, the upper deck of each vessel would rub along, the stems would hardly touch.

Recross-examination.

Mr. DENMAN.—Q. Captain, there is a point where the vessel might scrape along for a few feet and finally something give and she enter, is there not? That is to say, presuming she strikes, where the structure of the vessel is strong, she will scrape along until she strikes a weak point which will give; that is conceivable?

A. Yes, provided the angles are not too nearly opposite each other.

Q. That is a conceivable method of this collision?

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(Deposition of Alfred F. Pillsbury.)

A. That is conceivable.

Q. It is not utterly unreasonable, is it? A. No.

Mr. CAMPBELL.—Does that imply headway on the part of the [234] part of the "Necanicum" at the time of the impact?

A. Yes, decidedly. [235]

United States of America, State and Northern District of California, City and County of San Francisco,—ss.

I certify that on Monday, October 19, 1914, in pursuance of the notice and order of court filed in the above-entitled cause, at the office of Messrs. Mc-Cutchen, Olney & Willard, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., Alfred F. Pillsbury, a witness produced on behalf of libelant in the cause entitled in the caption hereof, and Ira Campbell, Esq., appeared as proctor on behalf of the libelant, and William Denman, Esq., appeared as proctor on behalf of the claimant, and that the said witness being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the said deposition was then and there taken down in shorthand notes by E. W. Lehner, and thereafter reduced to typewriting; and I further certify that by stipulation of the attorneys the reading over of the deposition to the witness and the signing thereof was expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the Clerk of the United States District Court for the Northern District of California, for whom the same was taken. [236]

And I do further certify that I am not of counsel, nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

Accompanying the said deposition and annexed thereto, and forming a part thereof, are Libelant's Exhibits 1 and 2, and Claimant's Exhibits "A," "B," "C," "D," and "E."

IN WITNESS WHEREOF, I have hereunto set my hand at my office aforesaid this 21st day of October, 1914.

[Seal] FRANCIS KRULL, United States Commissioner Northern District of California, at San Francisco.

[Endorsed]: Filed Oct. 21, 1914. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [237]

In the District Court of the United States, in and for the Northern District of California, First Division.

Before Hon. MAURICE T. DOOLING, Judge.

No. 15,513.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY (a Corporation),

Libelant,

VS.

The Steam Schooner "NECANICUM," Her Tackle, Apparel, etc.,

Claimant.

No. 15,675.

LEGGETT STEAMSHIP COMPANY, (a Corporation),

Libelant,

VS.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY (a Corporation),

Claimant.

(Testimony Taken in Open Court.)

Thursday, October, 15, 1914.

APPEARANCES:

For San Francisco & Portland Steamship Co.: IRA CAMPBELL, Esq.

For Leggett & Company: WILLIAM DENMAN, Esq.

Mr. CAMPBELL.—There are two suits, if your Honor please, one by the San Francisco & Portland

Steamship Company against the steam schooner "Necanicum" and the other by the Leggett Steamship Company, the owner of the "Necanicum," against the San Francisco & Portland Steamship Company, and by the consent of counsel, these cases will be consolidated for trial. They arise out of [238] the same collision. I represent the San Francisco & Portland Steamship Company, the owner of the steamship "Beaver."

Mr. DENMAN.—I will ask a sequestration of the witnesses during the course of the trial.

The COURT.—All of the witnesses will be excluded from the courtroom except the one testifying.

Mr. CAMPBELL.—On October 30th, 1913, the steamer "Beaver," a regular passenger liner of some 4,000 or 5,000 tons, plying between here and Portland, was coming down the coast, and shortly after noon of that day, passed Point Arena, and continued on her course to the next point of her journey, which would be Point Reyes; as she passed Point Arena, or shortly after passing Point Arena, the fog became intermittent, at times it would set in and at times it would lift, so that they could see ahead and inshore or offshore a distance of several miles. Our evidence will show that about 2:14, or shortly before 2:14, the second officer, who was in charge of the navigation of the "Beaver," called the master to the bridge, saying that it had the appearance of getting foggy. The master came onto the bridge, and shortly after that the lookout reported a steamer ahead, or slightly on the "Beaver's" port bow. At that time, it was estimated by those on the "Beaver"

that this steamer, which afterwards proved to be the "Necanicum," was from a mile to a mile and a half distant, and she was bearing nearly dead ahead, or to one side or the other slightly on the port bow, perhaps two or three degrees. They continued to approach each other. But very shortly after having sighted them, the master of the "Beaver" blew one whistle, indicating it was his desire to pass, for the steamers to pass port to port, that is, he should turn his steamer to starboard and the "Necanicum" should turn to the [239] starboard. Thereupon. he ordered his helm to port and it was done. No reply was received to the one passing whistle, and a second passing whistle was blown to the "Necanicum," which was answered with one passing whistle, indicating an acquiescence in that maneuver, but instead of turning in the direction called for by the whistle, the "Necanicum" starboarded her helm and turned toward the "Beaver." That is to say, the "Beaver" turned this way and the "Necanicum," instead of turning that way, turned toward her, and the two vessels came together, the "Necanicum" striking the "Beaver" about 25 feet abaft the "Beaver's" stem on her port bow; the angle of impact was from 45 to probably 60 degrees; some of

Mr. DENMAN.—I suppose your Honor would like to know what our case is. We claim that the fault in this case was on account of the excessive speed on the part of the "Beaver," which was com-

the witnesses even think it was nearly at a right angle. That, in brief, is the case that we expect to

make out.

ing down the cost on its regular run, keeping its regular passenger schedule, that when the boats came in sight out of the fog. the "Beaver" was on our starboard side; that is, we were on her starboard bow; and in that position it was her duty to blow two whistles and to proceed in passing us starboard to starboard; instead of doing that, she blew one whistle, an error, and crossed our bows, and we, although reversing and going astern at the moment of the collision, were run into by her, her port bow striking us squarely at an angle of say 45 or 50 degrees, crossing our bow, and turning the nose over and driving in the anchor on our port side into the side of the vessel: the faults we claim are excessive speed in the fog, the blowing of one whistle, and giving the wrong turn to the helm on the part of the "Beaver" at the time she should have blown two whistles, and [240] turning in the opposite direction, passing us to our starboard.

Mr. CAMPBELL.—Do you plead in your libel our excessive rate of speed in the fog?

Mr. DENMAN.—Yes, I have.

Mr. CAMPBELL.—It is not my recollection, if the Court please. The depositions which were taken, which undoubtedly will be offered in evidence, show the condition of the fog to be about as I have described.

Mr. DENMAN.—If your Honor please, in order that there be no question about the condition of this case, this libel alleges as follows, which was answered by our opponent, and denied:

"That thereafter and at about the hour of 2:15

o'clock P. M., and while proceeding at a moderate rate of speed, the lookout and the officers in charge sighted the steamer 'Beaver' proceeding through the fog at a very high rate of speed, to wit, 15 knots or thereabouts.''

Testimony of E. W. Mason, for Libelant.

E. W. MASON, called for the libelant, sworn.

Mr. CAMPBELL.—Q. What is your name?

- A. E. W. Mason.
- Q. What is your age? A. 40 years of age.
- Q. What is your business, Captain?
- A. Master mariner.
- Q. Of what steamer are you now master?
- A. The steamship "Beaver."
- Q. Of what steamer were you in October, particularly on October 30, 1913?
 - A. The steamship "Beaver."
 - Q. What is the size of the "Beaver"?
 - A. 2779 net tonnage.
 - Q. What are her dimensions?
 - A. 380 feet in length over all; 57 feet beam.
 - Q. And her draft? A. About 21 feet.
 - Q. What character of vessel is she?
 - A. A first-class passenger [241] ship.
 - Q. When and where was she built, if you know?
 - A. Newport News, 1910.
 - Q. Where does she ply?
- A. Between Portland, Astoria, San Francisco and Los Angeles.
- Q. Has she always been engaged in that business, since she has been on the coast? A. Yes.

- Q. How long have you been master of her?
- A. 2 years and 6 months.
- Q. What are her passenger accommodations?
- A. 571 passengers.
- Q. I hand you a photograph, and ask you of what it is a photograph? A. The steamship "Beaver."
 - Q. Taken bow on? A. Yes.
 - Q. At what time?
 - A. Taken while in the drydock.

The COURT.—Q. After the accident?

Mr. CAMPBELL.—After the accident. I personally happen to know this, of course; it was taken at the Union Iron Works drydock or Hunters Point drydock on the day that she was docked following the accident; but I simply offer it in evidence to give the Court an idea as to the type of ship that she is.

(The photograph was marked "Libelant's Exhibit 1.")

- Q. Were you the master of the steamer "Beaver" at the time of the collision with the steam schooner "Necanicum"? A. Yes.
 - Q. Where were you at the time of the collision?
 - A. On the bridge.
- Q. Whereabouts, as near as you can give it, did the collision occur?
 - A. 21 miles south of Point Arena.
- Q. Do you know what time your vessel had passed Point Arena? A. Yes.
 - Q. What time? A. 12:52.
- Q. What was the condition of the atmosphere at the time? [242]

A. A light fog prevailed, high fog.

The COURT.—Q. A light high fog?

A. Yes, sir.

Mr. CAMPBELL.—Q. Were you able to see the lighthouse at Point Arena?

- A. No, not the lighthouse.
- Q. Could you see anything of the land?
- A. Yes.
- Q. What portion of it?
- A. You could see the Point.
- Q. At what distance off Point Arena did you pass?
- A. 2½ miles.
- Q. $2\frac{1}{2}$ miles off? A. Yes.
- Q. What course had you been steering at the time you passed Point Arena, at the time you reached Point Arena?
 - A. Southeast by half south magnetic.
 - Q. Where had been your last point of departure?
 - A. Blunt's Reef Lightship.
- Q. When you had Point Arena abeam, did you then make a change in course? A. No.
 - Q. What course did you follow?
- A. I steered the same course for ten minutes, or $2\frac{1}{2}$ miles.
 - Q. Why was that?
- A. Well, the ship set in and we run down to Arena Cove before we hauled down, which would give us our proper distance off Point Arena.
 - Q. When did the ship set in, at what time?
 - A. She set in from the view of the land.
- Q. But during what portion of your course did she set in?

- A. Well, previous to reaching the point.
- Q. From Blunt's Reef to the Point? A. Yes.
- Q. How far did you continue to run on your course past Point Arena? A. Ten minutes.
- Q. Did you make any alteration in your course at that time?
- A. At that time, yes, we held her down to the regular course for [243] Point Reyes.
 - Q. What was that?
 - A. Southeast half east magnetic.
- Q. What course was your vessel on at the time you first knew of the presence of the "Necanicum?
 - A. Southeast half east.

Mr. CAMPBELL.—While we are on that portion of the case, if your Honor please, I would like to have the witness lay down the course from the chart. It will take but just a moment.

Mr. DENMAN.—What do you mean by the ship "setting in"?

- A. The current sets along the coast.
- Q. Inshore?
- A. Yes. In southerly weather we looked after that, during all the southerly part of the year, we have that.

Mr. CAMPBELL.—Q. Will you come here and take the dividers and lay down the course she was running at the time that you passed Point Arena, your change of course and the course on which you were running at the time of the collision?

The COURT.—Do you start that first course from Blunt's Reef?

Mr. CAMPBELL.—We cannot on this chart. He has given the distance off Point Arena at which he passed on that course. If the Court would like it, I could procure the chart above.

The COURT.—No, I just wanted to have the regular line pointing toward Blunt's Reef.

Mr. CAMPBELL.—Q. Will you mark in here the direction of your course above Point Arena?

- A. Yes, sir. Here it is.
- Q. What were you steering?
 - A. Southeast one-half south.
 - Q. Magnetic? A. Yes.
- Q. And that, as I understand, was from Blunt's Reef? A. From Blunt's Reef to that line.
 - Q. The point "A" is where?
 - A. The point abeam, the lighthouse abeam. [244]
- Q. Where on this chart is shown the point at which you next made your change? A. Right here.
 - Q. Where I have marked "B"? A. Yes.

The COURT.—A few minutes after passing the lighthouse? A. Yes.

Mr. CAMPBELL.—The course "A-B" is southeast one-half south, magnetic?

- A. Yes, I took that course right down.
- Q. On what course were you at the time you first became aware of the presence of the "Necanicum"?
 - A. Southeast one-half east.
 - Q. Magnetic? A. Yes.
- Q. Can you indicate upon the line the approximate point of the collision? A. Yes.
 - Q. At what time did the collision take place?

A. 2:18.

- Q. Will you indicate upon the chart approximately the point at which you fix the collision?
 - A. We ran 21 miles from Point Arena.
- Q. You indicate it. Have you indicated upon the chart the approximate point that the collision happened? A. Yes.
 - Q. Where is it? A. Right here.
 - Q. Where I have marked the letter "C"?

A. Yes.

The COURT.—Q. Is that the point of collision?

A. Yes.

Mr. CAMPBELL.—Q. That, you say, is 21 miles south of Point Arena? A. Point Arena, yes.

Q. By the word "south," you mean magnetic south, or southerly?

A. South or southerly.

The COURT.—Do you mean 21 miles from Arena on that course? A. Yes.

Mr. CAMPBELL.—I offer that chart in evidence.

(The chart is marked "Libelant's Exhibit 2.")

Mr. CAMPBELL.—Q. At what time did you go on the bridge of [245] your steamer prior to the collision?

A. Shortly after 2 o'clock, about five minutes past two.

The COURT.—Q. About five minutes past?

A. Yes.

Mr. CAMPBELL.—Q. Where were you before going on the bridge?

- A. I was sitting in my room, having my lunch.
- Q. Where is your room with respect to the bridge?
- A. Directly underneath it.

- Q. How did you gain access to the bridge?
- A. With a ladder, a ladder on each side.
- Q. There is no stairway from your room to the bridge? A. Yes.
- Q. From the interior of the room, is there a stairway to the bridge? A. No.
- Q. How did you happen to go on the bridge at that time?
- A. The second officer, who was on duty, reported to me it looked like it was going to set in foggy.
 - Q. Thereupon you did what?
 - A. I immediately went up on the bridge.
- Q. What condition of the atmosphere did you find existing at that time?
 - A. I could see three or four miles.
 - Q. Three or four miles? A. Yes.
 - Q. Thereafter, did it begin to thicken?
 - A. Yes, coming down in light, drifting.
- Q. At approximately what time did you first know of the presence of the "Necanicum"?
 - A. At 2:14 I first sighted her.
- Q. How was your attention called to her; that is to say, did you see it yourself, or was it reported to you by anyone?
- A. It was reported; when the lookout-man reported it, at the same instant I seen it.
- Q. Prior to your sighting the "Necanicum," I ask you whether or not the "Beaver" had been blowing any fog whistles. A. Yes.
- Q. What kind of a whistle is the "Beaver" equipped with? [246]

A. She is considered to have the best whistle—the "Bear" and "Beaver" are considered to have the best whistles on the Pacific Coast, loudest, strongest—

Q. (Intg.) What size whistle?

Mr. DENMAN.—I move that that go out.

Mr. CAMPBELL.—Let it go out.

Q. What size whistle has the "Beaver"?

A. I don't know the diameter of the whistle, about 3 feet long.

Q. About 3 feet? A. Yes.

Q. How does it compare in size with the whistle on other vessels on this coast?

A. Well, it is much larger than any of the vessels outside of the "Yale" and "Harvard"; the "Yale" and "Harvard" are considered to have the best whistles on the Pacific Coast.

Q. I am asking you about your knowledge, not about what is considered.

A. That is what we find, hearing the other whistles from other vessels, we have the strongest whistle of any.

Q. Were you master of any other vessel or any vessel prior to your going on the "Beaver"? A. Yes.

Q. While you were on the other vessels, did you ever pass the "Beaver," so as to hear her whistle?

A. Yes.

Q. What kind of a sounding whistle has she?

A. She has got a shrewd, coarse whistle, that can be heard for at least three or four miles.

Q. Were you on board the "Beaver" at the time of her collision with the "Selja"? A. No.

- Q. How was the "Beaver's" whistle operated at the time she was blowing the fog whistles prior to 2:14? A. The automatic whistle was blowing.
- Q. What do you mean by the "automatic whistle"? [247]
- A. That is an attachment that is onto the main whistle, and we have a little lever, three levers on the bridge, and we just throw that lever in and the whistle will blow automatically, the regular fog signals.
- Q. What length of time is there between the blasts? A. There is 55 seconds.
 - Q. Interval? A. Interval.
 - Q. What is the length of the blasts?
 - A. About 5 seconds.
- Q. Were you in position on board that vessel to know whether or not her whistle was sounding, was blowing as usual, a full tone, prior to your sighting the "Necanicum"? A. Oh, yes.
- Q. I will ask you whether or not it is a fact that there was any time on the voyage, or after leaving Point Arena, or before the collision, that your whistle, by the blowing of it, emitted steam, to give forth no sound.

 A. No, that cannot be.

The COURT.—You say that cannot be. The question is, was it? A. No.

Mr. CAMPBELL.—Q. What, if anything, Captain, would prevent sound being emitted by the whistle as steam was turned into it, as you do turn it into it to blow it?

A. Well, when the steam is turned on to it, the whistle must blow. There is a flapper on the whistle,

there, that takes all the water, if there is any water in the steam.

- Q. Pay attention to my question: My question is, If the whistle was prevented from blowing upon the turning in of the steam, what would prevent the sound coming from the whistle as it ought to?
 - A. I don't know as anything could prevent it.
- Q. If it were prevented, if, in fact, you turned on the steam to blow the whistle, you pulled the cord or your lever so as to let the steam into the whistle, and, in fact, no sound came out [248] of your whistle, what, in your judgment, would be the element or factor which would prevent the sound coming out?
 - A. There would be water in the whistle.
- Q. Now, I ask you, prior to the collision, or at any time on that voyage, whether that whistle was blown and failed to emit any sound by reason of water in the whistle?

 A. No.

The COURT.—Or for any other reason. Do you simply confine it to the one reason?

Mr. CAMPBELL.—Yes, for the moment.

The COURT.—Are there no other reasons that cause a whistle not to blow?

Mr. CAMPBELL.—Yes.

The COURT.—I didn't know why you were so particular to confine it to the water.

Mr. CAMPBELL.—I am leading up to another fact.

Q. What is there about the whistle, Captain, that would prevent water getting into it so as to stop the emission of any sound?

- A. We have an escape trap on the whistle, that carries off the water, prevents the water from going up into the pipe where the steam goes; the water cannot go up in the pipe where the steam is. This trap carries the water off, if there is any from the steam, so that the steam will go up and blow the whistle.
- Q. Now, I ask you whether or not on that voyage, and particularly prior to the collision, that steam was ever turned into that whistle for the purpose of blowing it without that whistle emitting its usual and customary sound? A. No.
- Q. As long as you have been master of the "Beaver," have you ever known of that whistle failing to emit its customary and usual sound upon steam being turned into it for that purpose?

 A. No.
- Q. Had you been blowing the whistle during the forenoon of that [249] day? A. Yes.
 - Q. Under what conditions?
- A. Light prevailing fog which settled down and lifted right up—we would probably blow one or two blasts and not blow it for a little while after that.
- Q. What was the condition of the atmosphere after you passed Point Arena and up to the time that you saw the. "Necanicum"?
- A. You could see a distance of four or five miles; offshore, you could see seven or eight miles; you could see the land in along the beach as we went along there.

The COURT.—What time was that?

A. After passing Point Arena.

Mr. CAMPBELL.—Q. From that time up to the time that you sighted the "Necanicum," did the fog

set in on you? A. Yes.

- Q. What was the condition of the atmosphere at the time that you saw the "Necanicum"?
- A. We could see fully a mile off all around the horizon.
- Q. Who reported the "Necanicum" to you, Captain? A. The lookout-man reported her.
 - Q. Where was he stationed on the "Beaver"?
 - A. Right forward on the forecastle-head.
- Q. Where is that with respect to the stem of the vessel? A. Right at the stem.
- Q. When you saw the "Necanicum" I understand you to say it was simultaneously with her being reported. A. Yes.
 - Q. Where did she bear to your vessel at that time?
 - A. Right ahead, sir.
- Q. If she were on one bow or the other, which bow would it be on, and at what angle?

Mr. DENMAN.—He said she was right ahead.

A. She appeared to be right ahead, a little, if anything, on the port bow from [250] where I was standing.

Mr. CAMPBELL.—Q. Where were you standing?

- A. A little on the starboard side.
- Q. Of what? A. Amidships of the mast.
- Q. Amidships of the mast?
- A. The mast amidships, a little to the right of the starboard of the mast.
 - Q. On what? A. On the bridge.
- Q. I will ask you whether or not it is true that at that time or at any other time when the "Beaver"

was within the distance of a mile of the "Necanicum" the "Beaver" was three-quarters of a mile to the starboard of the "Necanicum."

A. No. The "Beaver" was three-quarters of a mile.

Q. To the starboard of the "Necanicum"?

A. No.

The COURT.—Your question means, as stated, at any time that you were within a mile of the "Necanicum."

Mr. CAMPBELL.—Yes.

Mr. DENMAN.—You say any time within a mile of the "Necanicum" was she then three-quarters of a mile from the "Necanicum"?

The COURT.—No. That was not it exactly, but if at any time while she was within a mile of the "Necanicum" she was three-quarters of a mile to the starboard.

Mr. CAMPBELL.—I asked that question for the reason that the testimony of the first mate of the "Necanicum" was that when he saw the "Beaver"—

The COURT.—I understand by that you mean on a line three-quarters of a mile to the starboard.

Mr. CAMPBELL.—His testimony was when he saw the "Beaver" she was practically, approximately, three-quarters of a mile ahead and three-quarters of a mile to starboard.

Mr. DENMAN.—I disagree with you as to your interpretation [251] of the testimony.

Mr. CAMPBELL.—That is as accurate as I can state it now.

Q. What did you do, Captain, from the time that you first sighted the "Necanicum" with respect to the navigation of the "Beaver"? Tell the Court just what happened from that time on.

A. I ordered, or told the second mate to switch off the automatic whistle, and I blew the "Necanicum" one whistle, and I waited for about 30 seconds; at the same time, I ordered my quartermaster at the wheel to port—I waited about 30 seconds, and I did not hear any reply, passing signal, and I blew him another blast of the whistle, shortly after that.

Q. What whistle was that you blew then?

A. One whistle again, not having a reply from the other one; shortly after that, it might have been 30 seconds or thereabouts, why, we heard a whistle—I heard a whistle from the "Necanicum."

Q. What whistle?

A. One whistle; the wheel being to port and the ship starting to swing, she was swinging over to starboard; you see, the "Necanicum," apparently—there is no question about it—had its wheel to the starboard, and she swung on towards us, and I remarked, "I wonder what in the devil that fellow is doing." I told the second officer to put her full speed astern; the second officer put the telegraph full speed astern, and I blew him three blasts on my whistle, telling him that I was going full speed astern, we still swinging on the starboard helm. At that time, he was away over here, about three points on my port bow.

Q. You swung on what helm?

A. The port helm—we had been swinging off to

starboard, while he was swinging off, making a pretty good swing there, swinging around.

- Q. Which way was he swinging?
- A. He was swinging on apparently [252] a starboard helm; as he was swinging on toward us all the time. If he put his wheel the other way, or even continued his course, there would not have been, in my opinion, no collision.
- Q. I am not asking you for your opinion. I am asking you what was done with respect to your vessel and your movements.
- A. We backed the ship full speed astern and blew three whistles. The ship backed for along about two minutes, and the "Necanicum" threshed into us on our port bow, about 12 feet from the stem.
 - Q. At about what angle did they come together?
 - A. About 45 degrees, about a right angle.
 - Q. Is 45 degrees a right angle?
 - A. Practically—in along about 40 degrees.
- Q. When you blew your first one whistle, passing signal to the "Necanicum," from the time that you blew your first one whistle, passing signal to the "Necanicum," was she in sight? A. Yes.
 - Q. Up to the time of the collision? A. Yes.
- Q. Did you see any steam emitting from her whistle? A. No.
- Q. Prior to the time that you heard one blast of his whistle in answer to the second one blast of your whistle? A. No.
- Q. How far off did you judge the "Necanicum" to be at the time you first sighted her?

- A. Fully a mile.
- Q. When did you detect or observe the "Necanicum" swinging towards your vessel as though it were under a starboard helm?
 - A. We were about half a mile apart then.
- Q. At the time of the collision, what is your judgment as to the speed of your vessel?
- A. We were not making two miles an hour; we had practically stopped.
- Q. When the vessels came together, what did the "Necanicum" do, what became of her?
- A. Apparently she backed off and swung around so we could not see her whole starboard side; then she [253] backed away into the fog, and then the fog shut down thick; we could see her for fully two or three minutes after that.
 - Q. Did you hear any whistles from that time on?
 - A. We heard one whistle, that was all.
 - Q. What was it?
- A. Just the one blast, apparently a fog-signal, a long blast.
- Q. Now, before the vessels came together, Captain, were you in a position to observe whether or not there was anyone on the "Necanicum's" bridge?
 - A. Yes.
- Q. Did you see anyone on the "Necanicum's" bridge? A. Yes.
 - Q. What did you see?
 - A. No, not previous to the collision.
- Q. When did you see anyone on the "Necanicum's" bridge?

 A. After the collision.
 - Q. Describe what you saw, or whom you saw.

A. After the collision, a man came out on the end of the bridge on the starboard side, and he was in his shirt sleeves—he either was in his shirt sleeves or the sleeves were rolled up above his wrists, and the front of the shirt was all open, and he had no hat on, and he sung out something about "Why didn't you blow your whistle"; that is all I heard him say; that is all I seen of him.

Q. Did you ever at any time see any other person on the "Necanicum's" bridge than the man you have described?

A. No.

Q. Did you see anyone on the forecastle head in the position of a lookout? A. No.

Q. On the "Necanicum"? A. No.

Q. At any time prior to the collision? A. No.

Q. Did you after the collision? A. No.

Q. Could you see the damage that was done to the "Necanicum" as the vessels separated?

A. Oh, yes.

Q. What did the damage at that time appear to you to be? [254]

A. Just the stem was splintered for—not down to the water line—just splintered over a little to one side.

Q. What type of vessel was the "Necanicum"?

A. A wooden vessel.

Q. What type of a vessel?

A. Steam schooner, lumber carrier.

Q. Where was her machinery? A. Aft.

Q. Was she light, or loaded? A. She was light.

Q. How was her bow with respect to her stern, on the level?

- A. No, her bow was up higher than her stern was.
- Q. With a vessel trimmed as the "Necanicum" was at that time, would she draw more water aft than forward, or *vice versa?*
- A. She would draw more water aft; she had no freight in—I don't know what she had in—she looked pretty high out of the water forward.
- Q. Captain, I want you to just make a drawing here indicating the approximate movements of the two vessels as you have described them, from the time that you first blew your passing whistle to the "Necanicum." Will you take that sheet of paper and take these two models and assume that the larger one of the two is the "Beaver" and the smaller one is the "Necanicum." I am not asking you to do it to scale; I am asking you to show the approximate direction and movements of the two vessels.
 - A. There they are.
- Q. Have I correctly marked on that where you have laid down the "Beaver" and the "Necanicum"?
 - A. Yes.
- Q. I understand those positions marked "1" and "1" are the positions of the two vessels at the time that you saw the "Necanicum"? A. Yes.
 - Q. She was then approximately—
 - A. A good mile off.
 - Q. Directly ahead? A. Yes.
- Q. Which way did your vessel from that time on swing? [255] A. Swung toward the starboard.
 - Q. Under a port helm?
 - A. Under a port helm, yes.

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(Testimony of E. W. Mason.)

- Q. Take the two models now and place them so as to show the angle of impact between the two vessels.
 - A. When they came together?
 - Q. Yes, to show the angle of impact.
 - A. About like that (illustrating).

Mr. DENMAN.—Just leave them as they are. I want them drawn as he has put them there.

Mr. CAMPBELL.—The absurdity of that of course is manifest on its face.

Mr. DENMAN.—I don't think it is.

The WITNESS.—He came in around here.

Mr. DENMAN.—Don't touch that, Captain. I want that left there so that we can draw it in.

Mr. CAMPBELL.—As near as you can, show the course of the two vessels up to the time that they came into collision, so as to show the angle of impact.

Mr. DENMAN.—One moment, Captain. Don't move them.

Mr. CAMPBELL.—Let me suggest that you take the two models and lay them where you say they were before the captain moved them, Mr. Denman. The Court did not see that.

Mr. DENMAN.—Q. Is this the position they were in when you placed them there? As I understand, that is the position the captain put them in.

- A. I shifted that a little since then. [256]
- Q. You have not shifted this one since then?
- A. I moved it out a little bit.

Mr. CAMPBELL.—What I am after, if your Honor please is, I want the Captain to show the courses through which the two vessels went up to the time of the impact and the angle of impact. I am not

expecting it to be drawn to scale. We would have to go at it quite differently if we did.

Mr. DENMAN.—Just kindly draw them in as they were when you placed them before.

Mr. CAMPBELL.—Is my question to be answered or Mr. Denman's?

Mr. DENMAN.—Here is a witness put on to do certain things, and he answers the question by doing certain things and not satisfying my opponent, he says no, that is manifestly an absurdity, and wants him to do something else. If the chart is to be used at all in this way each move ought to be recorded.

Mr. CAMPBELL.—Mr. Denman, I think Judge Dooling was sitting there and did not see what took place. The captain put these models down here showing an angle of impact at a position that you must confess yourself could not have possibly been the position reached by the vessels passing through any course. Now it may be that you would like to have that put on the chart. Put it on yourself where they were before. What I am asking the witness now is to draw the course through which the vessels went as approximately as he can and showing the angle of impact. I think that the question is a fair question.

The COURT.—Is that where the witness placed the models in answer to your first question?

Mr. CAMPBELL.—No. I will show the Court where I think the models were placed. I think the models were placed like [257] that.

Mr. DENMAN.—They were not touching.

Mr. CAMPBELL.—You show the position where they were.

Mr. DENMAN.—That won't get us anywhere. My impression is that they were further apart.

Mr. CAMPBELL.—Show the Court where you think they were.

Mr. DENMAN.—Like that (illustrating).

The COURT.—Q. Where do you think they were placed, Captain?

A. I didn't pay much attention. I put the vessels together. As I understood Mr. Campbell to say, he wanted to know how the "Necanicum" ran into the "Beaver"; that is what I understood Mr. Campbell to ask; I did not understand Mr. Campbell asked to show the route they took.

The COURT.—Q. Show the angle of impact first.

A. A little more than this—that was the line that the ship came into that ship.

Mr. CAMPBELL.—Q. You have laid them down now in answer to the Court's question? A. Yes.

Q. Showing the angle of impact?

A. Yes, with this vessel.

Q. Let me draw them in that way. The ones that I have marked b prime and n prime. Mr. Denman, so as to be absolutely fair with you I am willing that you should lay the models on the chart as you think the Captain did in the first place and we will draw them in then.

Mr. CAMPBELL.—That won't get us anywhere. Let the Captain go on with his testimony.

Mr. CAMPBELL.—Q. Now, the question that I

asked you, at least that I want to ask you now is to take these two models and starting from the positions that you have marked 1, which you have said are the positions of the two vessels when you [258] first saw the "Necanicum," show me the approximate courses through which the two vessels passed up to and including the angle of impact?

A. Well, we seen that vessel this way; he was right square ahead, and I blew one blast of my whistle, and we ran along here, and the ship started to fall off this way, and I says to myself, what is the matter with that fellow, he is not answering the whistle, and I blew him another whistle about 30 seconds after; in the meanwhile we were pretty nearly all the time like this; the ship was swinging on the port helm; then he blew a whistle, he answered that whistle, or he blew a whistle anyway, and we continued to go along here, and the first thing I saw this fellow swinging this way, and I says what in the devil is he doing now, and I told the second officer to put her full speed astern.

Mr. DENMAN.—Q. When you say "swinging this way" mark that.

A. He had come ahead—this thing here must be over at that angle, more that way.

Mr. CAMPBELL.—Q. Mark that position so that there will be no question about it.

A. You see his head was swinging in toward us.

Mr. DENMAN.—Q. You first saw him in the position marked "Nec" 2: is that right?

A. Yes, with his head swinging this way all the time, swinging in toward us.

Mr. CAMPBELL.—Q. When you say "this way," the Reporter can't get that down—was it to port or starboard?

A. Swinging to port; his head was going toward port, was coming toward us all the time; and seeing that he was swinging in toward us we were playing off here at this angle.

Q. You continued to shove your vessel ahead as she was moving?

A. As we were moving here, we were probably about at that [259] angle; I stated to the second officer "put her full speed astern"; he threw the telegraph over, and I blew my three whistles; we started backing; as we started backing away we naturally swung a little more, as we would apparently; this fellow started to come along here.

Q. Wait a minute.

A. The ships then were about a quarter of a mile apart, at that angle; it might have been down this way a little bit.

Mr. CAMPBELL.-Mark it, Mr. Denman.

Mr. DENMAN.—Q. As I understand Captain, "Nec 3" is your impression of the relative position of the "Necanicum" to her first position to you when they were a quarter of a mile apart? A. Yes.

The COURT.—The second position, is that marked?

Mr. DENMAN.—Not the position of the Beaver."
At that time the "Beaver" seemed to be in the position B 2?

A. Yes.

Mr. CAMPBELL.—Q. What happened from that time, Captain?

A. Then we were backing, which naturally held our way, and we swung a little more, and he was more over in this position, as we could see all this side of him, his whole starboard side; we may have got a little more angle to ourselves.

Q. Place them where they came together?

A. There is where they came together.

Mr. CAMPBELL.—Will you mark those, Mr. Denman, too please.

Mr. DENMAN.—Q. That is right, isn't it?

A. Yes.

Q. I am now marking N 4 and B 3, as being the last position described by the witness, at the moment of impact. A. Yes.

Q. Those represent the successive positions with reference to one another?

A. Yes, as near as I can judge.

Mr. CAMPBELL.—You can cross-examine him later; let me finish my direct examination. I offer this in evidence.

(The chart is marked "Libelant's Exhibit 3.")

Q. What speed, Captain, was your vessel running at from Point Arena up to the time that you first observed—or at the time you reversed your engine on seeing the "Necanicum," which as I understand it, was the first change of speed you made?

A. We were making 14.7 knots.

The COURT.—Was that your usual speed, Captain? [260]

- A. We have made 16, your Honor; yes, we have made 163/4. That is our economical speed.
- Q. What I really meant was you had not slowed down because of the fog? A. No, sir.
- Mr. CAMPBELL.—Q. Who was on board with you at the time of the collision?
 - A. The second officer, Mr. Ettershank.
- Q. Do you know whether or not the chief officer came on board before the collision? A. Yes, sir.
 - Q. Did he remain there?
 - A. Oh, just a few seconds.
 - Q. What was his name? A. Mr. Parker.
 - Q. (By the COURT.) What time did he come on?
- A. He came on when he heard the three whistles and the backing of the engines; the ship backs very strong, she vibrates, she backs quick.
- Mr. CAMPBELL.—Q. I ask you what your judgment is as to whether or not the "Necanicum" had headway at the time of the collision?
 - A. Yes, sir; she had headway.
- Q. Did you ever receive three whistles or hear three whistles blown by the "Necanicum"?
 - A. No, sir.
- Q. Did you ever see any steam emitted from her whistle indicating that she was blowing three whistles? A. No, sir.

Mr. CAMPBELL.—That is all of the direct examination, if the Court please.

Cross-examination.

Mr. DENMAN.—Q. Captain, you had a number of passengers on your ship at this time, did you?

- A. Yes, sir.
- Q. How many? A. Over 480.
- Q. How severe a jolt did you get in the collision?
- A. We felt it; that is, she hit and bounced off like.
- Q. You hit and bounced off like?
- A. No, no, the "Necanicum" hit us and bounced back.
- Q. You will state then that the "Necanicum" bounced back from you? [261]
 - A. Yes; either—yes.
 - Q. You felt the jar, did you? A. Yes, sir.
- Q. How far did the "Necanicum" enter into your skin? A. Oh, I would say 4 feet; not over 4 feet.
 - Q. That was quite a cut, was it not?
- A. Yes, sir. It was all above the water-line. We have an overhanging bow and that is why.
 - Q. Did it twist your bow any, the stem?
 - A. No, sir.
 - Q. Did it do any damage below the water-line?
- A. No, sir. There was one plate there cracked a little, I believe; that was all.
 - Q. Did you make any water below the water-line?
 - A. Sir?
 - Q. I say did you make any water? A. No, sir.
 - Q. You swear to that?
 - A. Yes. Our fore-peak tank was full of water.
- Q. Did you lose any water from the fore-peak tank? Was there any injury to your hull at all below the water-line?
- A. A couple of plates were wrinkled up; I believe one plate was slightly cracked below the water-line.

- Q. You saw the "Beaver" after she was in the dock, did you not? A. Yes, sir.
- Q. I ask you whether or not this is a photograph taken of her bow at that time?

 A. Yes, sir.
- Q. What has happened to the lower part of the stem there?
 - A. This particular stem here?
 - Q. Yes. A. That is cracked right in there.
 - Q. That is below the water-line, is it not?
 - A. Yes, sir.
 - Q. Then she was cracked below the water-line?
 - A. Her stem, yes, sir.
 - Q. What is that twist on the bottom of the stem?
- A. She set over there a little; where she hit on the port side [262] the frames naturally bulged down on the other side.
- Q. So she had a blow on the side that sent her over below the water-line on the starboard side at about the point where the water is pouring out of the vessel in the picture?
- A. The frames on the offshore side were bent, yes, sir, I believe there were four cracked—the frames rather.
- Q. She received a blow then that twisted her over below the water-line so that she was twisted at the point where the water is seen in this picture running out from the bottom of the vessel. That is correct, is it not?
 - A. Yes; there is a little hole there; yes, sir.
- Q. But she had received a blow on the other side which had twisted the frames and made that injury?

- A. The reverse-bars, yes.
- Q. And that must have been below the water-line, must it not, to have made that?
 - A. Not necessarily to be hit there.
 - Q. So you could not tell, could you? A. No, sir.
- Q. Any blow on a ship—on the stem—in the neighborhood of the water-line might make that injury below; that is correct, is it not? A. It might; yes, sir.
- Q. And you cannot tell merely from looking at it how much damage you had—from the outside?
 - A. No, you would have to have a general survey.
- Mr. DENMAN.—I offer this in evidence as Claimant's Exhibit "A."
- Mr. CAMPBELL.—Q. How much above the water-line was this injury that you saw on the "Necanicum"? You testified it went about halfway down below the bow? A. Oh, about 20 feet.
- Q. How far from the water-line was the injury on the "Necanicum's" bow?
 - A. You mean from the water-line down? [263]
- Q. From the water-line above? You testified you looked at the "Necanicum's" bow, that she had simply been scratched and that the injury did not go down to her water-line; how much above the water-line did the injury extend?
 - A. About halfway.
- Q. In other words, the "Necanicum" had received no injury from the water-line to say 10 feet up—is that correct? A. Yes, so far as I could see.
 - Q. You could see her bow, could you not?
 - A. Yes, sir.

- Q. And you are sure of that, are you?
- A. I am sure of what I could see.
- Q. You are sure you saw her bow and she had no injury for about 10 feet above the water-line?
 - A. Yes, sir.
 - Q. You swear to that?
 - A. From what I could see, yes, sir.
 - Q. Well, you could see, could you not?
 - A. Yes, sir.
- Q. You could see it well enough to swear to it on Mr. Campbell's examination, could you not?
 - A. Well, yes.
- Q. Of course, having all these passengers on board you had a good deal to think about, did you not?
 - A. Yes, sir.
- Q. What was the first thing you did after the collision?
- A. The first thing I did after the collision was to come ahead on the engines and straighten the ship up on her course.
- Q. How soon after the collision did you give the order to come ahead on the engines?
 - A. Oh, a moment after.
- Q. A moment after; at that time what was your direction from the "Necanicum"?
 - A. The "Necanicum" was about abreast of us.
 - Q. About abreast of you?
- A. Yes, and practically on the same angle that we were on.
 - Q. In other words, when the two vessels struck,

you say they struck at an angle of about 45 degrees?

A. Along about there; yes, sir. [264]

- Q. After they had struck, the "Necanicum" turned around so that she was about parallel to you and pointing in the same direction?
 - A. Practically, yes, but wider off.
- Q. How soon after they struck was she in that position?
 - A. A couple of moments, about 30 seconds.
 - Q. Within 30 seconds?
- A. Yes, sir, because we watched her as she backed away and got the whole port side view of her.
- Q. And your assertion is that as she backed away she turned to her port and exposed to you more and more of her starboard side?
- A. Oh, yes, we seen the whole of her starboard side.
- Q. And she kept continually showing more and more until she backed away? A. Until the fog—
- Q. (Intg.) Until she was about parallel to you—that is correct, is it? A. Yes, sir.
 - Q. And all of that time she was backing?
- A. I would say so; I don't know; I didn't pay any attention to that.
 - Q. But your impression is she was backing?
 - A. Yes, sir.
 - Q. What gave you that impression, Captain?
- A. The ship was going astern from us, going away from us.
 - Q. Have you ever been on the "Necanicum"?
 - A. No, sir.

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(Testimony of E. W. Mason.)

- Q. About what direction was your vessel headed after the collision?
- A. Well, I did not note the compass. I took the ship and put her right back on the course.

The COURT.—Q. Do I understand the effect of your testimony to be, Captain, that within 30 seconds after the collision the "Necanicum" was headed in the same direction as yourself and parallel with you?

- A. Yes, sir, practically abreast of us.
- Q. Abreast? A. Yes.

Mr. DENMAN.—Q. And you were going ahead at full speed on your engines immediately after the collision, as I understand you—at once? [265]

- A. That was just to straighten her up, only for a few seconds.
- Q. Don't you know, as a matter of fact, that you ran for a minute after you straightened her up full speed ahead?
- A. It might have been along about a minute. I don't recall just the time, but it was within that time anyway, just to get the ship straightened up on her course again and get her on her right angle.
- Q. The "Necanicum" during that time was backing? A. Yes, sir.
- Q. And despite that fact the two of you ran along parallel so that at the end of a couple of minutes you were parallel with one another but she was off at a distance?

Mr. CAMPBELL.—The witness did not testify to that, he did not say a couple of minutes.

The COURT.—He said 30 seconds.

Mr. DENMAN.—He said that within 2 minutes she disappeared in the fog.

A. We were not making headway in that minute, we were not making any headway; it was just to straighten the ship up.

Q. You are sure you were not making any headway? A. Oh, yes, I am positive.

Q. That being the case, Captain, what further efforts did you make to discover whether or not the "Necanicum" needed your assistance?

A. The chief officer reported and the carpenter reported the ship was not making any water and that the damage was all done above the water-line.

Q. On your ship? A. Yes, sir.

Q. So you went right ahead? A. Yes, sir.

Q. The first bell was full speed ahead, was it, after the collision? A. Yes, to straighten her up.

Q. That was almost immediately after the collision? A. Yes, sir. [266]

Q. You were then thinking at once of taking your course and going on?

A. No, sir, I was not; I was thinking of putting the ship on her straight course. There were other vessels liable to come along, you know; we didn't want to lay broadside on on the ocean there and have other vessels coming along.

Q. How soon did you get your course in straightening her up?

A. Oh, about a minute.

Q. About a minute? A. Yes, sir.

Q. What did you do then?

A. When the chief officer reported that the ship

was making no water I put her on her course and proceeded to San Francisco.

- Q. What attempt did you make to find out what had happened to the "Necanicum" after that?
- A. From what we could see there was nothing the matter with her.
 - Q. Did you inquire?
- A. No, but from observations I was sure there was no damage to her.
- Q. I thought you just said, Captain, you could not tell when you had a blow on the stem like that that she had not been twisted below the water-line?
 - A. Are you speaking about the "Beaver"?
 - Q. I am speaking about any vessel.
- A. I was anxious to get the "Beaver" into port, knowing she had damage and with 480 passengers aboard of her. I was pretty anxious to get my ship into port with all those people.
- Q. I thought you said the chief officer reported there was no damage?
- A. The chief officer reported there was no damage done above the water-line and the carpenter reported the ship was making no water.
- Q. Is there any rule that requires you to stand by another vessel you have been in collision with?
 - A. Yes, sir. [267]
 - Q. What is that rule?
 - A. To stand by and ask if they require any help.
- Q. You admit you did not do that in this case, don't you? A. Yes.

Mr. CAMPBELL.—One moment. If the Court please, we object to that line of examination on the ground that it does not bear on the merits of the collision case. It may bear on the question of whether he is entitled to his license, or not, but it does not bear on the merits of the collision case.

The COURT.—We will have to suspend for a few minutes now because we have a jury coming in. (After a short recess.) I believe we left off at the point where you were asking the witness whether the ship stood by after the collision.

Mr. CAMPBELL.—And I objected to that line of testimony.

Mr. DENMAN.—I understand the rule to be, if your Honor please, that there is a burden thrown on a ship that fails to stand by, and that it places on her the additional burden of showing that she was not responsible for the collision. I will present the authorities to your Honor later on. As a matter of fact, I want to show weather conditions and other things—speed, and the location of the vessel by what happened afterwards and by what happened before. I am going quite fully into it.

Mr. CAMPBELL.—If he is going into it for one reason, that is one thing; if he is going into it for another reason, that is another thing. I simply want the record to show my exception. I am not familiar with any such rule.

The COURT.—I am not familiar with it either, but that does not imply that there is no such a rule.

Mr. CAMPBELL.—Of course, there is a statute of the United [268] States that makes it obligatory—

The COURT.—I understand there is a rule which requires a ship to stand by. What I had in mind though was would such a rule throw any light on the antecedent collision.

Mr. CAMPBELL.—Yes, that is my point.

Mr. DENMAN.—There is a provision of the rule to the effect that if the rule is broken then there is a presumption, and the burden of proof is on the party breaking the rule to show that the collision did not arise through his acts. I thought that that was familiar to all of the admiralty bar. I guess for the first time I have one on my friend Campbell.

The COURT.—Well, we will take the testimony and discuss the effect of it later; and that will be subject to your exception.

Mr. CAMPBELL.—Yes, your Honor.

Mr. DENMAN.—Q. What time did you leave your last port?

- A. 6 o'clock in the morning, on the 29th.
- Q. On the 29th? A. Yes, sir.
- Q. 6 o'clock exactly?
- A. Or thereabouts. 6 o'clock in the morning. I don't just remember exactly. It is a year ago.
 - Q. What was the last port? A. Astoria.
- Q. And then you sailed down the coast on this voyage? A. Yes, sir.
- Q. What weather did you have the day before the collision?

- A. We had a light northwest wind, I believe. I don't just recall it, but I believe we had northwest weather.
 - Q. Any fog? A. No, sir.
- Q. How was it on the morning of the collision, how about the fog then?
- A. Oh, it was clear. We made the light-ship. We seen the land anywhere. It was pretty clear. You could always see 4 or 5 miles. [269]
- Q. What revolutions were you making that morning as you came down the coast?
 - A. She was making $78\frac{1}{2}$.
- Q. Was that about your average rate of running there?
- A. She got a little lower than that, about 77 or $77\frac{1}{2}$.
 - Q. Was it a fraction above 77?
 - A. Well, it was in about that.
- Q. How did she come to change from one to the other? A. Current conditions apparently.
 - Q. Current conditions?
- A. Yes, sir. There might be a little wind, or a little choppy sea, or something of that sort.
- Q. There was not any change in the amount of power put on the engines, but some change due to the condition of the current; is that it?
 - A. Yes, sir.
- Q. You did not make any orders for any change in the number of revolutions at any time on that day, did you? A. No, sir.
 - Q. Who kept the bridge log-book?

A. There are three navigating officers and each officer keeps his own watch. We have three navigating officers on the ship.

- Q. Who kept the log that afternoon—Ettershank?
- A. That is, you mean from 12 o'clock?
- Q. Yes. A. Yes, sir.
- Q. Would you say that at this season of the year there is a likelihood of an inset current on that coast?
 - A. Yes, sir.
 - Q. From San Francisco north? A. Yes, sir.
- Q. That often sets you in on Point Reyes and Point Arena, does it not? A. Yes, sir.
- Q. And you often find that you bring up on both points a little closer than you expected on account of that current, do you not? A. Yes, sir.
- Q. What would your vessel make, or do you know exactly how many knots your vessel will make at 76 revolutions? [270]

Mr. CAMPBELL.—If the Court please, I cannot see the materiality of that. We admit a speed of 14.7 knots per hour. The witness has testified that that was the full running speed of the vessel, or her average running speed.

Mr. DENMAN.—That is what I am cross-examining him on.

Mr. CAMPBELL.—I believe he said the log stated 78 revolutions. I cannot see the materiality of the inquiry into what the speed would be at 76 revolutions, which was a lower speed than we admit we were going at.

The COURT.—That may be true, Mr. Campbell, but it does not appear so from the question.

Mr. CAMPBELL.—But does it not follow as a physical fact that if a wheel turns 78 revolutions she will give a faster speed than one driving at 76?

Mr. DENMAN.—Go right ahead and tell the witness all about it, Mr. Campbell. I am cross-examining him and you are now telling him what my theory is.

The COURT.—The trouble is you are assuming that the libellee is bound by the testimony that the vessel was going 14 knots.

Mr. CAMPBELL.—That is our admission.

The COURT.—Maybe counsel wants to show she was going faster than that. The witness said the vessel could go 16 knots.

Mr. CAMPBELL.—But he was asking him about 76 revolutions, which is a less number of revolutions than he answered she was going.

The COURT.—Let us assume that the witness would answer that at 76 revolutions the vessel would go 15 knots per hour; how can you determine from the question what the answer is [271] going to be? You may know what the answer is going to be; the Court however cannot determine it from the question. It is only when a question is palpably improper that the Court can shut off the answer.

Mr. CAMPBELL.—And I think Mr. Denman imputes to me a motive that is not present. I am not instructing the witness; I do not pretend to have the knowledge to instruct the witness.

Mr. DENMAN.—Mr. Campbell has stated one theory; I am going up and down that theory and cross-examine to my heart's content to find out if the witness is correct.

The COURT.—If we take it as an absolute fact that 78 revolutions will produce 14.7 knots per hour it would of course follow as night does day that 76 would be less than that. But that has not appeared up to the present time.

Mr. DENMAN.—I want to show that 76 revolutions will give a speed of over 15 knots.

The COURT.—The objection will be overruled.

Mr. DENMAN.—Q. What is your average running time down the coast?

The COURT.—Well, what have we done with the question that all this discussion is about?

Mr. DENMAN.—I didn't like to have the answer come right on top of the suggestion that has been made, if your Honor please. I will withdraw the question.

- A. When do you mean, at what time do you mean?
- Q. In fair weather.
- A. We have come down in 36 hours from Astoria.
- Q. 36 hours from Astoria? A. Yes.
- Q. And how far is that? A. 547 plus 15.
- Q. What is your average rate of speed down the coast? A. About 15. [272]
 - Q. About 15 knots? A. Yes, sir.
- Q. That includes entering and leaving port, does it not? A. Yes, sir.
 - Q. So you go faster at sea than 15 because you

have to go slow in leaving port and in entering port, do you not?

- A. Oh, no. If we have the tide favorable we go faster.
 - Q. You go faster up to the dock?
- A. We take our departure from the time we get up to Meiggs' Wharf; that is where we slow down and where we start.
- Q. But your running time is from dock to dock, is it not? A. No, sir.
- Q. What is it from, from the point where you leave one dock until you come to Meiggs' Wharf?
 - A. Yes, sir.
- Q. You do go slow in leaving your dock at Astoria, do you not? A. Not always.
 - Q. Do you go at full speed leaving that dock?
 - A. Yes, sir.
 - Q. You start right off at full speed?
 - A. I do; yes, sir.
 - Q. What is that? A. I do.
 - Q. I mean is that the practice with your ship?
 - A. It depends upon the tide.
- Q. With the vessel starting—with the vessel at rest in the water and you start out, you go at full speed, do you?
- A. Just swing the bow off a little; we can shoot right out at full speed ahead, yes, sir, when we get the ship lined up.
- Q. Do you know how fast your vessel will run under 76 revolutions?
 - A. We figure about 14 miles an hour. It all de-

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(Testimony of E. W. Mason.)

pends upon the slip. She has made only 8 miles an hour on 76. She has never made over 14. 76 is her average.

- Q. This day was a calm day, was it?
- A. Yes, sir.
- Q. Which way was the wind blowing?
- A. A light southerly wind. [273]
- Q. I say which way was it blowing?
- A. Against us.
- Q. Which way was the current setting, if you know? A. To northward.
- Q. Would that make any difference in the rate at which you went through the water?

 A. Yes, sir.
- Q. How does the current, if you are running in it, make any difference in the rate you would run through the water? I am not talking about between the land but I am talking about over the water?
 - A. We would run against the current.
 - Q. How would that affect your rate in the current?
- A. The log would show what current there was, if any.
 - Q. What time did you arrive in San Francisco?
- A. I do not know the exact time; it was in the neighborhood of 8 o'clock.
- Q. What is the effect of running into the current, on your log, with reference to showing an over run or an under run of the log?
- A. If the log under runs it shows we have the current with us; if it over runs we have the current against us.
 - Q. Do you know whether the log showed one thing

(Testimony of E. W. Mason.) or the other on that day?

A. I don't just recall; no, sir.

The COURT.—Q. State that again about the log. I didn't quite understand the effect of that.

A. If the log under runs the current is with the ship; if it over runs it is against it.

Mr. DENMAN.—Q. How far is it from Point Gorda to Point Arena?

A. That would be $12\frac{1}{2}$ miles off 97.

Q. $84\frac{1}{2}$ miles? A. Yes, sir.

The COURT.—We will put this matter over now until 10 o'clock to-morrow morning. I have another matter to take up.

(The further hearing of this cause was thereupon continued until to-morrow, Friday, October 16, 1914, at 10 A. M.) [274]

[Endorsed]: Filed Jul. 19, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [275]

In the District Court of the United States for the Northern District of California, Second Division.

Before Hon. MAURICE T. DOOLING, Judge.

Vol. II.

No. 15,513.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY (a Corporation),

Libelant,

VS.

The Steam Schooner "NECANICUM," Her Tackle, Apparel, etc.,

Claimant.

No. 15,675.

LEGGETT STEAMSHIP COMPANY (a Corporation),

Libelant,

VS.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY (a Corporation),

Claimant.

Friday, October 16, 1914. APPEARANCES:

For San Francisco & Portland Steamship Co.: IRA (CAMPBELL, Esq.

For Leggett & Company: WILLIAM DENMAN, Esq.

Testimony of E. W. Mason, for Libelant (Cross-examination—Resumed).

E. W. MASON, cross-examination, resumed.

Mr. DENMAN.—Q. We were discussing yester-day the question of the speed that your vessel pursued down the coast, and you testified that you did not think that the fact that you had to go slow in and out of harbors made any difference on your speed at sea—that you did not think the fact that you went slow in the harbors would make you go quicker outside, because you got up speed so rapidly when you started from the dock; that is correct, [276] isn't it?

- A. I don't understand you. I recall saying if you go out of a harbor and you have an ebb tide, you go out very fast, and if you have got a flood tide, going against it, you are not going so fast; it depends upon the condition of the tide, going in and out of a harbor.
 - Q. Suppose the tide were slack now? A. Yes.
- Q. No doubt at all there would be the same conditions in the harbor as you have at sea?
 - A. Providing there was no current outside; yes.
- Q. Well, the current of one day about makes up for the current of another day on the coast, does it not?
 - A. No. Throughout the summer months we have

the current setting in from the northward, on account of the prevailing north winds, which we have about seven months in the year; then the other five months, the current sets to the northward on account of the southeast winds.

- Q. Southeast to the northerly? A. Yes.
- Q. So that if over a measured course coming southerly in those five months you covered a certain distance between headland and headland, you would really cover more distance, because you have been coming through the water against the current?
 - A. Yes, sir, if there is a current.
- Q. You think that there was such a current against you on the day that you same down the coast and struck the "Necanicum"? A. No.

Mr. CAMPBELL.—I submit that the witness has not testified to that.

Mr. DENMAN.—He said there was a northerly current. That is correct, isn't it? A. No.

Q. You said that yesterday.

A. I said it could be expected, to have a northerly current set in to the northward with a southerly wind. [277]

- Q. That is during the five months in which you have this northerly current? A. Yes.
- Q. You expected to find such a current on that day, didn't you? A. Yes, some current.
- Q. You expected to find a northerly current, didn't you? A. Yes.
- Q. Now, you also found on that day there was an in-set current, didn't you? A. Yes.

- Q. When did you first discover that there had been an in-set current on that day?
 - A. When I sighted Point Arena.
- Q. What had been your previous observation so that you could tell it had been setting in?
 - A. At Greenwood City.
 - Q. How far was that? A. Nine miles.
 - Q. How much had you set in during that time?
 - A. About maybe half a mile to a mile.
- Q. Half a mile to a mile in nine miles. That is about right, is it?
- A. No. After we passed Point Gorda, at the Greenwood City side, from the view of the land you could see she had cut in from her course.
 - Q. Did you attempt to go out then? A. No.
- Q. You cut in. Mow much had you cut in by the time you reached Point Arena? A. About a mile.
- Q. Cut in a mile by the time you reached Point Arena? A. Yes.
- Q. So you think it made a difference of half a mile between those two points?
- A. I could not say where the set came; nevertheless, when we were abreast of Point Arena, we were closer in than we had been on previous voyages.
 - Q. You think about a mile? A. Yes.
- Q. Greenwood City, you say, is about nine miles before that? A. Yes.
 - Q. Had it set in about half a mile at that point?
- A. It might [278] have been a quarter, in along about there.
 - Q. So there was considerable in-set between Green-

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(Testimony of E. W. Mason.)

wood City and Point Arena. That is your testimony?

- A. No. I can't say that it came all right between there, but in the entire course from Point Gorda down, or Cape Mendocino, Blunts Reef Lightship to Point Arena, she had set in.
- Q. Let me get it: You just said you noticed after you left Greenwood City abreast, that you had set in still more when you got to Point Arena. I want to know how much it was.
 - A. I did not take any observation, I could not say.
 - Q. Was it enough to notice it?
- A. She might have not set in from Greenwood City to Point Arena. As I said, she was a little closer at Greenwood City than she formerly had been—she was closer to Point Arena.
- Q. You aimed to pass what distance off—what distance off did you aim to pass Point Arena?
 - A. From three to four miles off.
 - Q. From three to four miles off? A. Yes.
- Q. As a matter of fact, the usual course is four miles out, isn't it?
- A. No, three miles; she has been making three miles right along.
 - Q. I am talking about coming down, not going up.
 - A. Three miles.
 - Q. What is it going up?
 - A. Sometimes four—anywhere from three to five.
- Q. Don't you sail more to your starboard on one course than on the other?

 A. No.
 - Q. Isn't that the usual custom on this coast?

- A. No. Some people pass the point a mile off and sometimes they pass it ten miles off.
 - Q. On which course? A. Either way.
- Q. Don't you know of a regular practice here of keeping further [279] out to sea on the down course than on the upper course? A. No.
 - Q. Now, you had set in a mile over 20 miles of run?
 - A. 97 miles.
 - Q. 97 miles? A. Yes.
- Q. What point did you observe between Point Gorda and Greenwood City? A. None.
 - Q. Could not see any? A. No.
 - Q. On account of the fog?
 - A. There is not any to be seen along there.
 - Q. All fog?
- A. There is not any place to be seen in there. The course is pretty wide in there; she is anywhere from 9 to 15 miles offshore.
 - Q. 9 to 15 miles offshore?
 - A. The land sets in around there.
- Q. The first thing you saw was Greenwood City, then?
- A. The first thing. We have seen the land along there; we would not take any notice of it if we had any land coming along there.
- Q. The first thing you noticed in the way was Greenwood City? A. Yes.
- Q. You could not tell whether that in-set had come the first part or last part or coming along the 97 miles you came down? A. No.
 - Q. It might have piled on the last moment, and

might have been distributed all along, or in the beginning?

- A. She was a little closer to Greenwood City than usual; there was some little in-set there; it showed up a little closer than it did before.
- Q. You think by the time you reached Point Arena it was still more in-set? A. I could not say.
- Q. Then you don't know where the in-set had come? A. No.
- Q. Except some of it may have occurred before Greenwood? A. Yes.
- Q. Captain, going back to the question of coming in and going out of port. As I understand it, you say if the conditions in the [280] harbor were the same as at sea you would start full speed ahead the minute you got clear of the dock, and would have about the same speed in the harbor that you would out on the ocean?
- A. Yes, if conditions were the same in the harbor as at sea.
- Q. It would take you about a minute to get full speed?
- A. Yes. She has to be warmed up. As a rule, she is warmed up before leaving the dock. But she don't gather headway right at the instant.
- Q. It would be a minute before she was under full speed? A. Along about there; yes.
- Q. You observe that in the harbor coming out after passing Meiggs' Wharf?
- A. No, we do not pay any attention to that; we put the ship full speed, and she comes along.

- Q. You can tell, then, by experience from observing the water alongside moving when you have your full speed? A. Yes.
 - Q. You think that is about a minute?
 - A. Along about there.
- Q. Now, how was your vessel laden on that day? What did she draw fore and aft?
 - A. I don't just recall; she was loaded, though.
 - Q. Was she of the customary draft? A. Yes.
 - Q. What is the customary draft, about?
 - A. About 18-26; 18 feet forward and 26 feet aft.
 - Q. That puts her in good steering condition?
 - A. Yes.
 - Q. Was she in good steering condition that day?
 - A. Yes.
 - Q. About as good as she ever is? A. Yes.
 - Q. How is your steering gear, in good shape?
 - A. Yes.
 - Q. Respond readily to it? A. Very quick.
 - Q. Very quick? A. Yes.
 - Q. In fact, it is very handy to turn, isn't it?
 - A. Yes.
 - Q. You had about the usual cargo?
 - A. About the usual cargo, yes. [281]
- Q. Now, as you came down, as I understand it, you saw in the fog the steamer "Necanicum"?
 - A. Yes.
 - Q. And you at once blew one blast of the whistle?
 - A. Yes.
- Q. And at once—what order did you give to your helmsman? A. Wheel aport.

- Q. You say about 30 seconds thereafter, not getting any response, you blew a second one whistle?
 - A. Yes.
- Q. And then about immediately you saw her turning off crossing your bow? A. Yes.
- Q. And then you immediately gave "Full speed astern"? A. Yes.
- Q. That was almost at once after giving your first whistle?

 A. Oh, no; some little while after.
 - Q. Well, now, let us see: What did you do then?
 - A. When?
- Q. After you saw she was turning to starboard, toward your starboard?
- A. Why, the ships were coming close together, to avoid a collision, have more room, seeing that he had put his wheel to run across our bow, I backed the ship full speed; as we were getting pretty close together then.
- Q. Now, Captain, what way does the "Beaver" swing when you are going full speed astern from full speed ahead, prior to the time that you get sternway?

 A. I do not quite understand the question.
- Q. Which way does your vessel turn in the water during the period between headway and sternway, when you are going full speed ahead and give your engines reverse full speed?
- A. As long as she has got a little headway, she would naturally swing to starboard; with a right-hand propeller, it would tend to swing her some to starboard.
 - Q. Turn rather rapidly to starboard, would she

not? A. Why, yes, she would. [282]

- Q. She would turn a good deal more rapidly than if she was merely on a port helm, would she not?
- A. It all depends; if the ship was stopped and had sternway, she would make—
- Q. (Intg.) I am talking about the period before she stops. You say she never stopped on that day?
- A. She had two miles headway—she had a little headway, about two miles, before we came together.
- Q. We will see about the amount later on. She never was stopped. What I am addressing myself to is entirely the condition while she is still running ahead with a reversing propeller. Now, as I understand it, you say that will very materially assist the helm in turning her to starboard.
- A. Well, it is a matter of just which way the propeller is; if she is backing, it would not have so much effect on the ship if she had headway on. Now, if the ship was stopped, with a sternway, the propeller would naturally kick her around, because it is a right-hand wheel.
 - Q. You have a right-hand wheel, have you not?
 - A. Yes.
- Q. Don't you know that the propeller on your vessel, when she is gradually slowing down, turns her very rapidly to starboard?
 - A. With headway on her?
- Q. When she has headway, I mean during the period prior to her stopping.
- A. It won't turn her so quick; it won't kick her her around so quick.

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- Q. How quick would she turn, do you know?
- A. No. I have never tried her out.
- Q. You made some experiments on the vessel after this collision, didn't you? A. Yes.
- Q. Where? A. At sea, practically the same position.
 - Q. Did you make a report of those experiments?
 - A. A report to who?
 - Q. Did you make any report to anybody on them?
 - A. We have a [283] record of it, I believe.
 - Q. What did you do with it?
 - A. The general manager had it.
 - Q. When was that made, what date?
 - A. I don't just recall the date.
 - Q. When will the "Beaver" be in port again?
- A. To-day, at one o'clock; she is due along about one o'clock.
 - Q. What time will she sail?
 - A. To-morrow at 12 o'clock she is due to sail.
- Q. Now, as I understand it, immediately after the collision, you recognized that it was your duty under the United States statutes to stand by and assist this other vessel, but that you looked her over very carefully and saw that she was not injured to any extent and went on; is that right? A. Yes.
- Q. You were very careful of that observation, weren't you?
 - A. I could see the ship, yes, very plainly.
- Q. You had to make up your mind whether you were going to obey the statute?
 - A. Yes. I saw the ship for a couple of minutes,

and I remarked, "Well, there is nothing the matter with him, just got his stem shattered, and he is all right, nothing the matter with his bow—nothing the matter with the bow of his ship." In addition to that, I sent a wire to Mr. Hammond, a wireless to Mr. Hamond, in reply to one that he had sent telling him that the ship was all right, to proceed.

Q. Now, isn't it a fact that in reply to the wire from Mr. Hammond that you had received, you wired that the "Necanicum" had proceeded on her way to Eureka?

A. In reply to his message?

Q. Yes.

A. He asked me that question, if she could proceed on her voyage, and I told him yes; I do not just recall the exact words, but all I could see was, there was something to the effect that all he had had was his stem shattered, that he could [284] proceed on his voyage.

Q. Now, as I understand it, all that you noticed of the other vessel was that she was backing away from you?

A. When?

Q. Until after she had disappeared in the fog.

A. Yes.

Q. You did not leave her until she had disappeared, did you? A. No, she had disappeared.

Q. Before you moved away?

A. Oh, yes; that is, we could see her for two or three minutes, three or four minutes.

Q. You did not go away and leave her while she was in sight; she had disappeared before you left her, hadn't she?

- A. Oh, no—yes, she had backed away in the fog; we could see that she was backing and straightening out, and we left her.
 - Q. Before straightening herself out? A. Yes.
 - Q. I thought she was going up the coast?
 - A. She was bound north.
- Q. You say that when you last saw her she was pointing the same direction you were in and leaving you in the fog. How do you account for that?
- A. Well, she was not exactly bound south—she was turned around to go north, she appeared to me, when I last saw her.
- Q. That was, you say, about just as you left to go away, was it? A. Yes.
- Q. That, you say, was about two minutes after the collision?
 - A. It might have been three or four minutes.
 - Q. Your bells will show that?
 - A. Along about that time.
 - Q. Your bells would show that?
 - A. No, not exactly.
- Q. You could not leave without ringing the bells to leave, could you?
 - A. Do you mean when we got under way?
 - Q. Yes. A. No.
- Q. So that, before you gave these bells to leave her, she had disappeared in the fog; that was it, was it not, or did you run [285] away from her standing there? A. Run away from her?
 - Q. Yes? A. Oh, no.
 - Q. Then I ask you, before you gave your bells to go

ahead, she had disappeared in the fog, hadn't she?

- A. Yes.
- Q. You are sure of that? A. Yes.
- Q. Now, you say that she struck at about right angles; is that right?
- A. Thereabouts, yes; anywhere along about between 45 and 60 degrees.
- Q. What do you call right angles? How many degrees is a right angle?
 - A. That will be 90 degrees.
- Q. When you say at right angles, you mean 90 degrees?
- A. In along about there, anywhere around 60 degrees.
- Q. Now, what is it—45, or 60, or 90? You can tell the difference.
- A. I did not take any bearings of it; it appeared to be about that.
 - Q. About at right angles?
 - A. Yes, between 6 and 8 points, you might say.
 - Q. Between 6 and 8 points she struck? A. Yes.
 - Q. 45 degrees would not be that much, would it?
 - A. That would be 4 points.
- Q. Your first statement that you made was that it was about 45 degrees.
- A. Well, about that, yes, anywhere between 45 and 60, about from 4 to 6 points, in along through there, I did not take any bearings on it.
- Q. But you did take particular notice of the condition of the bow, to determine whether or not you could leave her with safety? A. Yes.

- Q. And that examination of her bow was just as careful an examination as the examination you made to find out whether there was a lookout there?
- A. Oh, yes; the ship, when I was looking [286] at her, was not ten feet off.
- Q. Did you ever put a glass on her at any time as you approached her? A. No.
 - Q. Nobody on the bridge did.
 - A. I did not pay any attention.
 - Q. You did not see anybody put a glass on her?
 - A. No.
- Q. You say that you changed your course after Point Arena, or 2½ miles thereafter? A. Yes.
- Q. And that you ran 21 miles south of Point Arena before the collision? A. Ves.
- Q. I note by the log, here, that you passed Point Arena abeam at 12:52. Is that correct?
 - A. If the log says so, it is correct.
 - Q. And that the collision occurred at about 2:18?
 - A. Yes; I recall that.
- Q. What did you figure the rate of speed you were going at? A. 14.7.
 - Q. That is just 15 knots, isn't it?
 - A. A little shy of 15—14.7.
- Mr. DENMAN.—We can calculate that in the argument.
 - Q. Who laid off the next course?
 - A. Who laid off the course?
 - Q. Yes. A. I laid off the course.
- Q. You did that. Who did you give the orders to regarding it?

- A. Well, I laid off the course; the second officer was on the bridge.
 - Q. Where did you lay it off? A. On a chart.
 - Q. Have you got that chart now?
- A. I don't know; it might be on the ship. I don't know if the exact course is laid off there.
- Q. What course did you say you instructed them to go on? A. Southeast by half east. [287]
 - Q. That was on what compass?
- A. The bridge compass; we always steer by the bridge compass.
- Q. How was the bridge compass calculated. You say $\frac{1}{2}$ east? A. South 50 degrees.
 - Q. What would that be on the pilot-house compass?
- A. It is a little different there; about $\frac{1}{8}$ of a point, I believe.
- Q. You laid that off, that course, for your next point of departure. What was the next point of departure; Point Reyes? A. Point Reyes.
- Q. How much did you allow for the in-set between the two places?
- A. We don't allow any in-set, unless it is not clear, and then we take soundings, and keep track of the ship from the soundings. There might be an in-set between Mendocino and Point Arena, and there might not be any in-set between any other points.
- Q. I thought you just said that you expected an in-set as you came down there between San Francisco and Point Arena. That was your testimony yesterday.
- A. Expect an in-set between Point Arena and Point Reyes?

- Q. Yes, that is what you said yesterday on the stand. How about that?
- A. Well, it is to be expected you would have an inshore in-set along the coast in southerly weather.
- Q. When you came to Point Arena, it was so foggy you could not see the point, could you?
 - A. Yes, we could see the point.
 - Q. Could you see the lighthouse? A. No.
 - Q. You could not see the lighthouse? A. No.
- Q. What sort of a fog was it, one of these lifting and setting fogs? A. Yes.
 - Q. Liable to come down on you any moment?
 - A. Yes.
- Q. Liable to come down quite thick at any moment, was it not? [288]
- A. The way it had been acting, it did not—it had not been acting that way.
 - Q. I mean it might on that coast at that time?
 - A. Yes.
 - Q. It might at any time: That is correct?
 - A. It might, yes.
- Q. But you made no allowance for any in-set between those two places? A. No.
- Q. Despite the fact that you had found an in-set previous to that time, the usual in-set, expected at that season of the year: That is correct, isn't it?
 - A. Yes.
- Q. How much outside the 30-fathom curve off Point Reyes do you usually attempt to make?
- A. Sometimes we are only a quarter of a mile off Point Reyes and sometimes five miles.

- Q. What is your custom when you have in-set in foggy weather on the coast, how far do you attempt to pass it outside?
 - A. We do not figure so much on the in-set.
 - Q. Why don't you, if you have foggy weather?
 - A. Why don't I?
 - Q. Yes?
 - A. Because I don't operate my ship that way.
 - Q. Why don't you operate it that way?
 - A. That is my business.
- Q. Then will you explain to the Court now exactly why, when you have an in-set, you should take a course that would bring you a quarter of a mile off of a headland, when you have 50 or 60 miles to run to?
- A. That course would not have brought her a quarter of a mile off the headland.
 - Q. What would it be?
- A. This course would take her about one and a half miles off.
 - Q. About that? A. Along about there.
- Q. You had how much of an in-set since your last departure?
- A. Somewhere about a mile, between half a mile and a mile.
 - Q. You could tell how much it was, couldn't you?
 - A. Yes.
- Q. You say that despite that fact and despite the fact that you [289] had expected an in-set in that condition of weather and at that season of the year, you made allowance for it between Point Arena and

Point Reyes. That is correct, is it? A. Yes.

- Q. What did you expect to do, supposing you found yourself set in?
- A. Well, we would take soundings before we got to the point. We always set the ship on the same course again to make the point; there might be a set there to the northward and it might be a set to the southward; to off-set that, before we get to the point we take soundings and find if the ship is on the track; if she is not making the track, we will haul her in or out, whatever it may be.
- Q. What made you pass Point Reyes, or Point Arena 2½ miles before changing your course, when you ordinarily change it in front of the point?
- A. Because we generally pass up there three miles and she was about $2\frac{1}{2}$ miles; that would off-set the distance, keeping that same course, before we hauled her down or hauled her in.
- Q. You come and draw this course exactly as it was. That is southeast three-quarters east on here, whatever it was.
- Mr. CAMPBELL.—I submit, if your Honor please, there is no evidence but what he has drawn it.
- Mr. DENMAN.—Draw it in the way I have requested it.
- Mr. CAMPBELL.—There is an insinuation in that that the course was not drawn as it was.
- Mr. DENMAN.—Will you step down here, please, Captain. You drew southeast half east. A. Yes.
- Q. I want you to draw it southeast three-eighths east.A. Southeast three-eighths east?

Q. Yes.

Mr. CAMPBELL.—That is southeast three-eighths east magnetic, [290] Mr. Denman?

Mr. DENMAN.—Yes, magnetic.

A. That is southeast three-eighths east.

Mr. CAMPBELL.-Mark it down, Captain.

A. All right.

Q. Now, indicate it with letters, the last course that you have drawn; mark the southerly end of the line you have last drawn with the letter "D." A. Yes.

Mr. DENMAN.—Now, as I understand it, you laid out your course that day to pass Point Reyes about a mile and a half off? A. Yes.

- Q. And you carried your course down, to make certain of it, to the point when you drew it at Point Arena?

 A. I don't understand.
- Q. That is, you carried your course down to Point Reyes to see where it would bring you, didn't you?

A. Yes.

Q. As I understand, you did not want to get too far out or too far in?

A. You could go up alongside of Point Reyes, there is a pretty fine whistle there, and get a good departure from there.

Q. Would your vessel be quick enough to get out of danger if you got too close to the point?

A. It depends how close you wanted to get in; you don't want to get inside of the land, the point.

Q. She would handle pretty well in a tight place of that kind, wouldn't she? A. Yes.

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(Testimony of E. W. Mason.)

Redirect Examination.

Mr. CAMPBELL.—Q. Captain, how did the course that you ran this day from Blunt's Reef to Point Arena compare with the usual compass course that you run on your voyages?

A. We steered the same course—you mean, how did she keep on the course? [291]

Q. Now, I am asking you about the compass course that you ran this day, from Blunt's Reef to Point Arena, how did that compare with the usual course that you run between those two points?

A. The same course we steer.

Q. After you got your course, your ship back on to the course between Point Arena and Point Reyes, how did that course compare with the usual course that you run?

A. The same course.

Q. In your running up and down the coast, is it customary for you at any time to make allowances for any set-in of the current?

A. Not at the start of the course, no.

Q. Yesterday you said that the "Necanicum" entered four feet into the "Beaver." Will you explain what part of the "Beaver" that was?

A. I did not measure that; it was about four feet.

Mr. CAMPBELL.—I have here, if your Honor please, some photographs which I personally saw taken, and I believe that counsel has a duplicate set in his hands, and with his consent I should like to offer them in evidence.

Mr. DENMAN.—No objection.

(The photographs were marked Libelants' Exhibit "A.")

Mr. CAMPBELL.—I suggest, for convenience, that we number these various photographs, "A," "B" and "C" on the inside of the exhibit.

Mr. DENMAN.—Q. You have seen these before, haven't you, Captain?

A. I don't recall.

Q. Have you seen any photographs of the injured portion of the "Beaver"?

A. Yes, I have seen some; I have a couple of copies aboard. I have not seen any others.

Mr. CAMPBELL.—Q. I hand you "Libelants' Exhibit 4" and ask you to explain, if you can, from these photographs, what portion [292] of the "Beaver" was penetrated to the extent of four feet, as you have testified. Go ahead and point out to the Court the portion of the "Beaver" that you said was penetrated this four feet.

A. This part up in through here—

Q. Refer to all the photographs, and see if you cannot find one that shows it more clearly than the others.

Mr. DENMAN.—Pick out your one, Mr. Campbell.

The WITNESS.—On account of the ship flaring out—

Mr. CAMPBELL.—Q. I will show you these photographs you have seen. You take these photographs and pick out the one which shows the penetration of the "Beaver" to the extent that you have testified. Which shows it the best to the Court?

- A. These are practically the same. This picture, here.
- Q. That is referring to the photograph marked "F" of Exhibit 4?
- A. The ship is flared up in through here,—it was right in through here. There was quite a little dent in here where the anchor of the other ship penetrated the side of the ship, and a little place over here where the anchor on the other bow penetrated the ship; right in through here, the ship bulging out, she went deeper in there, I should judge about 4 feet, I did not measure it, just judged entirely by the eye.
- Q. Captain, within what distance, at the speed that you were going, could you stop your ship?
 - A. Within half a mile.
- Q. You said to Mr. Denman this morning that you saw the "Necanicum" in the fog, and that thereupon you blew your first passing whistle. Is or is not it a correct statement that you saw the "Necanicum" in the fog at the time you blew?
- A. She was coming out of the fog; I could see the whole hull of the ship.
- Q. At what angle, as you recall it, did the "Necanicum" lie to your steamer as you passed on out of sight of her. How was she [293] heading at that time?
- A. Well, she was on a swing to go up toward the northward, heading toward the northward.
- Q. Do you know of any uniform practice on this coast by which steam schooners and steamships have definite lanes up and down the coast, so that at one time they are closer in shore going one way than they

(Testimony of E. W. Mason.) are in the other? A. No.

Q. Is it true or not true?

A. No, that is not true.

Recross-examination.

Mr. DENMAN.—Q. Captain, where did you measure your course when you determined you could stop the "Beaver" in half a mile? A. At sea.

Q. Where did you measure that course?

A. I don't understand your question.

Q. Whereabouts did you measure the course at sea to determine that you could stop her in half a mile?

A. Why, it was up around to the northward of Point Reyes; I don't know just exactly where it was; it was done here some eight months ago or a year ago.

Q. What was the point on shore that was just half a mile long that you went by?

A. We did not use a point half a mile long; we took observations from a barrel with a flag in it, put in the water, and also the log.

Q. You describe how you did it. You put a barrel in the water with a flag. What did you do then?

A. Then I had the chief officer there with the sextant; we put the engine, the telegraph "Full speed astern," and the chief officer took observations of that, and the time the ship was stopped at a standstill, we had the lead in the water, and we got it then, got an observation from that, the distance she had run by the log and by the sextant showed that—I don't just recall—but it was somewhere in the [294] neighborhood of 1,400 feet or 1,500 feet; 1,480 feet

or 1,500 feet. We have a record of it. It was in that neighborhood, about half a mile.

- Q. Now, you are sure of that, are you, it was about half a mile?
- A. Yes, I am positive of it. It was along about 1,500 feet.
 - Q. How do you make it half a mile in 1,500 feet?
- A. I said about half a mile; it was in that neighborhood; it was between 1,400 and 1,500 feet, I said about half a mile.
 - Q. You could stop her dead in that time?
 - A. Yes.
- Q. Now, of what good was your log to you in measuring out the distance?
- A. We noted the log; we had the quartermaster there and blew the whistle and he read the log, the moment the engines were put full speed astern, and also noted the log at the time that the ship was stopped.
- Q. But you said this morning you had not taken observations as to how much you had turned to starboard during that time?

 A. Turned to starboard?
 - Q. You did not take any observation of that?
 - A. Oh, yes.
 - Q. You said this morning you had not.
 - A. I don't recall saying that.
- Q. I asked you whether you had ever determined how much your vessel would turn to one side or another.
- A. One side or another—well, we didn't do that. We took the observation to see how quick we could

(Testimony of E. W. Mason.)

stop the ship, from the time she was going full speed ahead to full speed astern. I know we can turn the ship around in four minutes, make a complete circle with her.

- Q. You can turn her around in four minutes?
- A. Yes.
- Q. Now, Captain, what was the condition of the weather when you made this experiment?
- A. I don't just recall; if I remember right, it was calm, with a little light northwest wind. [295]
- Q. Have you got a memorandum of that experiment anywhere. A. Our general manager has it.

Mr. DENMAN.—Have you got it, Mr. Campbell?

Mr. CAMPBELL.—I have a copy of it in my possession.

Mr. DENMAN.—I would like to see it. I would like to have you produce the original.

Mr. CAMPBELL.—I have not the original, I have a copy.

Mr. DENMAN.—Then I ask your client to produce it. It is in your client's possession.

Mr. CAMPBELL.—Q. Where is the original record, Captain? A. I don't know.

- Q. Did you enter it in the log-book?
- A. I don't recall.
- Q. If you did enter it in the log-book, would the log-book be now on board the "Beaver"? A. Yes.
- Q. When the "Beaver" comes in, Captain, will you make it your business to go down and see if the logbook has these entries in it, and if it has, produce it in court? A. Yes.

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(Testimony of E. W. Mason.)

Mr. DENMAN.—If it is not there, I will ask you to produce it, Mr. Campbell.

Mr. CAMPBELL.—I am willing to produce the copy I have.

Mr. DENMAN.—Furthermore, I desire to have produced the record made by this gentleman to this principal, your client.

Mr. CAMPBELL.—I will produce anything you ask, anything they gave me a copy of. They are the same.

Mr. DENMAN.—Very likely that is so, but there may be mistakes made, such as the difference between half a mile and a quarter of a mile. I would like to see all the reports that have gone in along those lines.

Q. Now, Captain, you say that your bow flares out at the top? A. Yes. [296]

Q. And that the first thing that the "Necanicum" would necessarily strike would be that top?

A. Yes.

Q. And then she would strike along upon the flare as she went ahead and finally would strike the body of your vessel. Isn't that correct?

A. Yes; that top don't come right out, flare right out—

Q. It flares down gradually?

A. It flares up gradually.

Q. So it really is in the shape of a curving "V" from the water line up, a very slight curve at the bottom and bigger at the top? A. Yes.

(Testimony of E. W. Mason.)

Redirect Examination.

Mr. CAMPBELL.—Q. How many feet do you take to a mile? A. 2,080 feet.

Q. Feet to a mile?

A. 2,080 feet we take in a nautical mile, all the time.

- Q. How many feet to a mile? A. 2,080.
- Q. 2,080? How many feet to a statute mile?
- A. What did I say, 2,080? 6,080 to the nautical mile.
 - Q. How many would there be to half a mile?
 - A. That would be 3,040.
- Q. How do you reconcile to the Court your statement that your steamer was stopped within 1,400 or 1,500 feet and now you say a half a mile is 3,040 feet?
- A. I said about half a mile; it was in about 1,500 and some odd feet the ship was stopped.
 - Q. Is that about half a mile or not? A. No.
 - Q. What is it about?
 - A. That would be one-third of a mile.
 - Q. It would be what?
- A. You see, there is 6,080 feet to the nautical mile; 3,040 would be half a mile.

The COURT.—1,500 feet would be about a quarter of a mile.

A. About a quarter of a mile, yes. [297]

Recross-examination.

Mr. DENMAN.—Q. Is that the way you calculate the distance on the bridge when you are approaching another vessel?

A. A nautical mile?

(Testimony of E. W. Mason.)

Q. No, the way you have calculated this quarter of a mile, and half a mile, and mile?

A. No. I said about half a mile. I said that offhand. I said about half a mile.

Q. You think that 45 degrees is a right angle?

A. Oh, no. I said the ship was approaching between 4 and 6 points.

Q. You said 6 and 8 points, Captain.

A. Did I say 6 and 8? Well, along about 6 points, yes.

Q. Might be 4, might it not?

A. No, a little more than 4.

Q. Why did you say 4 to 6, then, if it could not have been 4? That is all. No answer to that question.

Mr. CAMPBELL.—We will ask the witness to answer the question. I did not understand the witness refused to answer it, or could not answer it.

Mr. CAMPBELL.—Read the question, Mr. Reporter.

(The last question repeated by the Reporter.)

A. Well, it was more than 4.

Mr. DENMAN.—Q. It might have been $4\frac{1}{2}$?

A. It might have been 4½; it was nearer to 6.

Q. So it was. You said 45, didn't you?

A. The first time you asked, I said about that, about 45 degrees.

Q. That was the impression you got, was it not?

A. Between 4 and 6 points, yes. [298]

Testimony of Joseph W. Ettershank, for Libelant.

JOSEPH W. ETTERSHANK, called for the libelant, sworn.

Mr. CAMPBELL.—Q. What is your name?

- A. Joseph William Ettershank.
- Q. And what is your age? A. 31.
- Q. What is your business? A. Master mariner.
- Q. On what vessel are you presently employed?
- A. The "Beaver."
- Q. How long have you been on her?
- A. Over four years.
- Q. What is your position?
- A. Second officer at present.
- Q. Were you on board the "Beaver" at the time of her collision with the "Necanicum"?
 - A. Yes, sir.
- Q. What was your position on board of her at that time? A. Second mate.
- Q. What time did you go on watch the day of the collision? A. 12 o'clock, noon.
 - Q. Where was she at that time, the "Beaver"?
 - A. North of Point Arena.
 - Q. Do you recall what time she passed the point?
 - A. About 8 minutes to one.
 - Q. What is that? A. 12:52.
 - Q. What time did you go off the bridge that day?
 - A. What time did I go off watch?
 - Q. Yes. A. About half-past 4.
- Q. Were you or were you not on the bridge continuously from the time you passed Point Arena until after the collision?

- A. I was on the bridge; yes.
- Q. What course were you steering up to Point Arena as you approached it northwardly?
 - A. Southeast ½ south, magnetic.
- Q. When did you change your course after you passed Point Arena? A. I changed it at 1:02.
- Q. What course did you then take after you changed it at 1:02? [299]
 - A. Southeast ½ east, magnetic.
- Q. And you had been running up to that time on what course? A. Southeast ½ south.
- Q. What was the condition of the atmosphere at the time you passed Point Arena?
- A. A light fog at times. You could see 3 or 4 miles.
- Q. Were you able to see the lighthouse at the point?
- A. No, we could not see the lighthouse but we could make out the land, the point of land. The lighthouse was obscured.
- Q. About what time did you first discover the presence of the "Necanicum"? A. About 2:14.
 - Q. Was the master on the bridge at that time?
 - A. Yes, sir.
 - Q. When had he come on the bridge?
 - A. A little after 2 o'clock.
- Q. Had you said anything to him before he came on the bridge?
- Mr. DENMAN.—Don't lead him please, Mr. Campbell, he is willing enough.
 - Mr. CAMPBELL.—I am not attempting to lead

the witness. I ask the witness whether he said anything to the captain.

- Q. Had you, or not, said anything to the captain prior to his coming on the bridge? How did the captain happen to come on to the bridge?
 - A. I whistled down to him.
 - Q. For what purpose?
 - A. That it was going to shut in thick.
 - Q. About what time was that?
 - A. Oh, around just a little after 2 o'clock.
- Q. How soon after you called him did the master come on to the bridge? A. Immediately.
- Q. Will you state whether or not he left the bridge from that time on until after the collision?
 - A. No, sir. He was there all the time. [300]
- Q. What kind of weather did you have from the time that the master came on to the bridge up to the time that you saw the "Necanicum"?
- A. From the time the master came on the bridge until the time we sighted the "Necanicum"?
 - Q. Yes. A. It closed in foggy. It was foggy.
- Q. Was anything done with your whistles during that period?
 - A. We set our automatic whistle blowing.
 - Q. How does the automatic whistle act or operate?
- A. It blows 5 seconds out of every minute; 55 seconds interval. A 5-seconds blast.
- Q. What do you do to start the automatic whistle blowing?
- A. There is a lever there and you just turn it right over.

- Q. Does the whistle blow any differently, the automatic, does it blow any differently from the steamship's regular whistle that you use for passing purposes? A. What is that?
- Q. Is the whistle that blows by the automatic arrangement any different from the passing whistle?
 - A. It is an electric whistle.
 - Q. But is it a different whistle?
 - A. No. It is the same tube, the same instrument.
 - Q. It is the same brass tube? A. Yes, sir.
- Q. During the time you were in the fog and up to the time that you saw the "Necanicum," after you turned on the automatic, did your whistle ever fail to emit a sound?
 - A. No, sir, it was blowing all the time.
 - Q. What kind of a sound does it give forth?
 - A. It gives a good sharp report, blast.
 - Q. What size whistle is it?
 - A. I never measured it.
 - Q. How large a whistle would you say it was?
 - A. About that long (illustrating).
- Mr. DENMAN.—Q. What is that; about 18 inches? [301]
 - A. About that, 18 or 20 inches, yes, sir.
- Mr. CAMPBELL.—Q. How does the sound compare with the average whistle on steam vessels going up and down the coast, as you have observed them?
 - A. It is classed as one of the best whistles.
- Q. What has been your observation in that regard? What has been your observation as to the character of sound your whistle gives forth as com-

(Testimony of Joseph W. Ettershank.) pared to the character of sound from the whistles on other vessels?

- A. It has been said that other steamers have heard it a long ways off. It has always been classed as a good whistle.
- Q. At any time after starting the automatic up to the time of the collision I ask you whether or not any water got into your whistle so as to prevent a sound coming from the whistle and yet steam passing into the whistle and from the whistle?
 - A. No, sir; the whistle was blowing clear.
 - Q. Did you see the "Necanicum"? A. Yes, sir.
- Q. What first called your attention to the "Necanicum"?
- A. I made out the object of a vessel right coming out of the fog.
- A. Was any report received by you from anyone as to the presence of the "Necanicum"?
 - A. The lookout-man sang out.
 - Q. Where was the lookout-man stationed?
 - A. Forward, on the bow of the ship.
- Q. What was the bearing of the "Necanicum" at the time you first saw her?
 - A. Almost ahead, a little bit on the port bow.
 - Q. How much on the port bow?
 - A. Oh, a couple of degrees.
 - Q. Where was the master at that time?
- A. Standing amidships, a little bit on the starboard side of the bridge.
- Q. How far off do you think that the "Necanicum" was at that time? [302]

- A. About a mile distant.
- Q. What was done by your vessel from that time on?
- A. The captain changed his course and blew one whistle.
 - Q. What change of course was made?
 - A. He ported.
 - Q. Who gave the order to port?
 - A. The captain.
 - Q. To whom? A. To the quartermaster.
 - Q. Where was the quartermaster stationed?
 - A. In the pilot-house.
- Q. Where was the pilot-house with respect to your bridge?
- A. Just below where the captain was standing, right in the fore part.
- Q. Go on and describe to the Court the navigation of your vessel from that time on.
- A. The captain blew one whistle and waited for an answer; there was no answer. In the matter of half a minute he blew again, and he says, "Port more; put her hard aport." The ship was swinging to starboard. The "Necanicum" did not seem to change her course. She started to come toward us. I was standing by the telegraph there, and the captain said, "Full speed astern"; I put the telegraph to full speed astern, and the engineer answered it. At the same time the captain blew three whistles to indicate that our engines were going astern.
 - Q. Who worked the telegraph? A. I did, sir.
 - Q. When you observed the change in course on

(Testimony of Joseph W. Ettershank.) the part of the "Necanicum," which way did she swing with respect to your vessel?

- A. The "Necanicum" was swinging toward us.
- Q. And to do that under what helm must she have been operating at that time?
 - A. The starboard helm.
- Q. What would the exchange of one whistle require her to have done; what helm should she have been under when one whistle was exchanged? [303]
 - A. She should have put her helm to port.
 - Q. And what would have happened then?
 - A. We would have cleared each other.
 - Q. She would have gone to starboard too?
 - A. Yes.
 - Q. At what angle did the vessels come together?
 - A. Almost right angles.
 - Q. Where was your vessel struck?
 - A. Port bow.
 - Q. How far from the stem? A. About 12 feet.
- Q. What became of the "Necanicum" after the collision? A. You mean immediately after?
 - Q. Yes. A. She bounced off away from us.
- Q. How was she headed immediately after the collision? How was she headed with respect to your vessel immediately after the collision?
 - A. She was swung around.
- Q. Which side of her could you see after the collision? A. The starboard side.
- Q. How did she angle toward your vessel? What was her position? A. Like that (indicating).
 - Q. On an acute angle, with her starboard side to

you? A. Yes, sir, her starboard side.

Mr. DENMAN.—Q. You mean pointing nearly parallel? A. Pretty near; yes, sir.

Q. In the same direction? A. Yes, sir.

Mr. CAMPBELL.—Q. What speed, if any, was your vessel making at the time of the collision, in your judgment? A. About 14.7.

Q. At the time of the collision?

A. Oh, at the time of the collision we had a little headway on her but practically stopped.

Q. What was the 14.7 speed you mentioned? [304]

A. That was the speed the ship had been making up to the time of the collision.

Q. You say up to the time of the collision; was that speed of 14.7 affected at all by your reversing before the collision?

A. Sure; that was the actual time we made from the light-ship down to Point Arena, 14.7.

Q. How well could you see the "Necanicum" immediately prior to the collision? Could you see the "Necanicum" with any clearness, or not, before the collision? A. Sure, we could see her clear.

Q. Did you observe whether or not there was anyone on her forecastle-head? A. No, sir.

The COURT.—Q. Do you mean by that that you did not observe?

A. I did not see nobody; no, sir.

Q. I don't understand your answer. The question is, did you observe whether there was anybody there or not?

A. No, sir, there was nobody there.

Mr. CAMPBELL.—Q. Could you or could you not see the forecastle-head so as to know whether there was anybody on there?

A. Sure I could see the forecastle-head because we were away up higher than she was; I could see if there was anybody there.

Q. Did you see anyone on the "Necanicum's" bridge? A. No, sir.

Q. Did you after the collision? A. Yes, sir.

Q. Describe what you saw there?

A. I saw a man with a brown shirt and no hat. He came up on the starboard side of the bridge and he said, "Why aren't you blowing your whistle"?

Q. How far off was the "Necanicum" at that time?

A. She was not much over two ship lengths; let me see—a couple of hundred feet, 200 or 300 feet away.

Q. What was the condition of the weather as to wind and sea? [305]

A. There was a southerly wind, a moderate sea.

Q. How would you describe the force of the wind?

A. It was not blowing over 3 or 4 miles an hour.

Q. What was the condition of the water?

A. A small sea on.

Q. I hand you a book and ask you what it is?

Mr. DENMAN.—One moment. I object to the witness refreshing his memory from the log if it is not shown that he cannot testify from his memory without it. That is not evidence for the ship.

The COURT.—Does he need anything to refresh his memory?

Mr. CAMPBELL.—I have not asked him for a single thing out of the log. I am simply asking him what this book is.

The COURT.—Well, that is true, too; it has been used around here though as the log.

Mr. CAMPBELL.—I simply want to identify it as the ship's log.

Mr. DENMAN.—We admit that.

The COURT.—And we have been using it around here during this trial as the ship's log.

Mr. DENMAN.—I object to the witness reading it before he testifies to any matter.

Mr. CAMPBELL.—I will ask the question that I was leading up to.

- Q. Who made the entries in this log from the time you were on the bridge until you left the bridge?
 - A. Myself.
- Q. In recording time in a bridge log do you note the half minutes?

A. No, sir; it is to the next minute; we take the time to the next minute.

- Q. If time is given in a ship's log, which you have written in, as of a certain minute, what interval of time may that minute represent? I want to know whether or not if a certain event is recorded as of a certain minute, I want to know whether or [306] not that means that that event occurred just exactly on the minute? A. Yes.
 - Q. Supposing an event occurred—

The COURT.—That is not in accordance with your former statement. Do you know just what is meant by this question?

A. He means if there is something that happened like now, for instance, whatever time it is now, say 11 o'clock, and it was but a half minute to 11—

Q. You would record it at 11?

A. Yes, record it at 11. Is that what you meant by your question, Mr. Campbell?

Mr. CAMPBELL.—That is what I had in mind. The Court drew it out more clearly than I did.

The COURT.—That is what I gathered from his statement, that it might occur on the half minute but it would be recorded as of the next minute.

Mr. CAMPBELL.—Yes, your Honor.

Q. Is there any equipment about the "Beaver's" whistle which prevents water getting into the whistle so as to stop the emitting of sound?

A. No, sir. There are drains to it; there is a trap where all the water runs into.

Q. How many years have you been on the "Beaver"? A. Four years.

Q. Were you on her at the time of her collision with the "Selje"? A. Yes, sir.

Q. During all the time that you have been on the "Beaver" will you state whether or not you have ever known of steam being turned into that whistle for the purpose of blowing the whistle without the whistle emitting sound? A. It has always blown.

Q. In coming down the coast from Blunt's Reef to Point Arena how did the course that you were then 364 San Francisco & Portland S. S. Company (Testimony of Joseph W. Ettershank.) on compare with the usual course that you take?

- A. She was a little close. [307]
- Q. Why? How did the compass course you were running compare with the course you usually run? What compass point did you take from Blunt's Reef to Point Arena? A. Southeast ½ south.
- Q. How did your compass course then compare with your usual course on that run?
- A. Sometimes she makes in and sometimes she makes out.

The COURT.—Q. That is not the question; he is asking about the course itself.

- A. That is the regular course.
- Q. The regular course? A. Yes, sir.

Mr. CAMPBELL.—Q. How did the course you were on after having changed the course from Point Arena to Point Reyes compare with your usual course?

- A. That was our usual course for Point Reyes.
- Q. I will ask you whether or not, in your judgment, from what you saw of the "Necanicum," she was stopped at the time of the collision?
 - A. No, sir, I think she had headway on her.
- Q. From the position that the two vessels were in as they approached each other prior to the collision would there have been any collision if at that time the "Necanicum" was stopped or going astern? What is your judgment if as the vessels approached each other prior to the collision the "Necanicum" had been stopped; would there have been any collision? A. No, sir.

- Q. If it be a fact that prior to the collision the "Necanicum" was actually going astern from one to 4 miles per hour I will ask you whether or not there would have been any collision? A. No.
- Q. Was there any time after the "Necanicum" and "Beaver" were in sight of each other when the "Beaver" was approximately 3/4 of a mile ahead and 3/4 of a mile to the starboard of the [308] "Necanicum"? Did you hear that question?
 - A. Repeat it again, please.
- Q. Was there any time after the "Necanicum" and the "Beaver" were in sight of each other when the "Beaver" was approximately 3/4 of a mile ahead and 3/4 of a mile to the starboard of the "Necanicum"? Do you understand the question?

A. No, sir.

- Q. My question is, at any time after the "Beaver" and the "Necanicum" came within sight of each other was the "Beaver" at a point or a position 3/4 of a mile ahead of the "Necanicum" and 3/4 of a mile to the starboard of the "Necanicum?" I will put the question this way: At any time after the "Necanicum" came in view of the "Beaver" was the "Beaver" on a course which would have carried her 3/4 of a mile to the starboard of the "Necanicum"? Can't you understand the question?
 - A. No, sir, I don't understand it.
- Q. After these two vessels came into sight was there any time when the "Beaver" was on the course so that she would have passed the "Necanicum" 3/4 of a mile to the "Necanicum's" starboard?

- A. No, sir.
- Q. Was she ever at any time on a course so she would have passed the "Necanicum" ½ a mile to the "Necanicum's" starboard?
- A. The "Necanicum" came closer to us all the time when we were approaching.
- Q. Answer my question, if you can do so. Was there any time after the two vessels came into sight when the "Beaver" was on such a course that she would have passed $\frac{1}{2}$ a mile to the starboard of the "Necanicum"?

The COURT.—The question is rather confusing in view of the witness' own testimony that the vessels, when discovered, were practically dead ahead. It stands to reason that if [309] they swung to starboard and the other vessel did not approach them they might be on a course that would carry them that far away.

Mr. CAMPBELLI.—Q. When the "Beaver" was ½ a mile distant from the "Necanicum" was she or was she not at that time at a position which would have carried her ½ a mile to the starboard of the "Necanicum" if she continued her course?

- A. If the "Necanicum" continued her course, do you mean?
 - Q. If both vessels continued their courses?
- A. Yes, if we kept our own courses, if the "Necanicum" had not altered the wheel.
 - Q. Which way would you have passed?
- A. We would have passed on the port side of the "Necanicum."

- Q. If before there was any alteration in the courses of the two vessels, and after they came in sight of each other, the two vessels had held on to the courses which they were then pursuing, would the "Beaver" have passed ½ a mile to the starboard of the "Necanicum"?
 - A. You mean when we first met each other?
 - Q. When you came into view.

The COURT.—Q. Supposing neither ship changed its course after you came into view, what then would have happened?

Mr. CAMPBELL.—No, that is not my question, your Honor.

The COURT.—That will reach it in the same way.

- Q. What would have happened if neither ship changed its course?
 - A. We would have come on head on.
 - Q. Head on. A. Yes, sir.
- Q. Was there any time between the time you first saw the "Necanicum" when if neither ship had changed its course they would have passed ½ mile apart?
- A. Yes, when we changed our course, when we ported our helm. [310]
- Q. Was there any time in that interval where if neither ship changed its course you would have passed ½ a mile apart?
- A. Yes, sir, we would have passed—it would not be ½ a mile, though. We would have passed them clear. After we sighted them we ported our helm.
 - Q. I understand that, but let us assume that you

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(Testimony of Joseph W. Ettershank.) went on the courses laid?

- A. No, we would have come together.
- Q. If neither ship had changed the course after you first sighted you would have come together?
 - A. Well, pretty near.
- Q. Was there any time between the time the vessels were first sighted and the time when you did collide that if neither ship had changed its course they would have passed $\frac{1}{2}$ a mile apart? A. No.
 - Q. There was no such time? A. No.

The COURT.—Of course, that follows from his first statement. That seems to me what you are trying to get distinctly into the record.

Mr. CAMPBELL.—That is all.

Cross-examination.

Mr. DENMAN.—Q. Where did this collision take place? A. South of Point Arena.

- Q. How far south? A. About 21 miles.
- Q. 21 miles south? A. Yes, sir.
- Q. Did you make that calculation of 21 miles south yourself?
- A. You could figure it from the time we run; yes, sir.
 - Q. From the time you run? A. Yes, sir.
- Q. And how long did you run, how many minutes did you run? A. How many minutes did we run?
 - Q. Yes. A. About 86 minutes.
 - Q. Wasn't it 84? A. I said about 86. [311]
- Q. As a matter of fact, was it not 84 minutes? What time do you figure that the vessels came together? A. 2:16 or 2:18.

- Q. It really was 2:16, was it not?
- A. What is that?
- Q. It really was 2:16 that they came together, was it not? A. No, sir.
- Q. Did you note down in your log-book at the time?
 - A. Yes—no, I did not note it in the log-book.
- Q. When did you write up your log-book with reference to that? A. After it cleared up.
- Q. After it cleared up that day? This is in your handwriting, is it not? A. Yes, sir.
- Q. You did not make any alterations of any kind in this afterwards, did you? You did not make any changes in it after you had first written it up? I mean this is just the way you wrote it up the first time? A. Yes, sir.
 - Q. You didn't rub out anything and rewrite it?
- A. There are a couple of places there I made a mistake and I changed it right there at the time I was writing it.
- Q. Do you remember what the mistakes were that you made?
- A. There was one place off Point Arena, I rubbed it out—the distance of miles, and I just put it approximately.
- Q. You did not make any change in the description of the weather or in the happenings at the time of the collision, did you? A. No, sir.
- Q. You are sure you did not make any alteration in the description of the collision afterwards?

A. No.

- Q. You are absolutely sure of that, are you?
- A. Yes, sir.
- Q. You did not make any change as to the distance that you saw the vessel off from you, did you?
- A. No, sir. I had it rubbed out there because I forgot to put down—I wrote something else and I rubbed it out and I had to put it down again. [312]
- Q. You did make a change in the distance that the vessel was off?
 - A. No, sir, I put something else there altogether.
 - Q. What else did you have there?
- A. I got ahead of my writing, or something, and I rubbed it out there.
- Q. What did you have when you got ahead of your writing?
- A. I omitted the one; I just put miles; I rubbed it out and just put one mile.
- Q. You didn't make any change as to the time when the vessel was sighted, did you? A. No, sir.
 - Q. You are sure of that, are you?
 - A. Sure, yes, sir.
 - Q. You swear to that? A. Yes, sir.
- Q. And you didn't make any changes as to the condition or the description of the fog? A. No, sir.
 - Q. You are sure of that, absolutely?
 - A. Yes, sir.
- Q. That is to say, the description of the fog at Point Arena and after you had the collision is exactly the way you wrote it the first time?
 - A. Yes, sir.
 - Q. You will swear to that, will you?

- A. Yes, sir.
- Q. Absolutely? A. Yes, sir.
- Q. You would have remembered it if you made any change in the condition of the fog, would you not?
 - A. Yes, sir.
- Q. When did you notice that you made this mistake with regard to the distance being about a mile ahead, and making that alteration in the log, when did you notice that mistake?
- A. After I wrote it up I read it over and I noticed it then.
 - Q. After you read it over you noticed that?
 - A. Yes, sir.
- Q. Did you use the same pencil when you made the change? A. Yes, certainly.
- Q. You say here at one place, "the ship swung about 2 points to starboard"; why did you make a change in the 2 points to starboard? [313]
 - A. I don't remember making any change.
- Q. And you used a different pencil on the "2" there, didn't you? A. Not that I know of.
- Q. Could you possibly have used two pencils on this? A. No, sir.
- Q. You might have used two pencils on this, might you not? A. No, sir.
 - Q. You are sure of that, are you, Mr. Ettershank?
- A. I was only using the one pencil when I wrote it up there at that time.
 - Q. Did you write it up at any other time?
- A. No, sir; I mean when I was writing my log up there.

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- Q. When did you write this up with reference to the collision? A. After the collision.
 - Q. After the collision? A. Yes, sir.
- Q. Now, as you go down in this book I notice, for instance, that you have here "2 o'clock"; I am referring now to Thursday, October 30th. You have "2 o'clock, 4:56:34"; was that entry made right at the time? A. Yes, sir.
- Q. And take here the entry, "1:02, southeast 86 east"; was that made at the time? A. Yes, sir.
- Q. And here is "2:25, slow to 70 degrees, thick fog" etc.; was that made at the time, right on the bridge?
 - A. I took a little pad and entered it on there.
 - Q. Was this entered in the book at that time?
 - A. No, sir, not in the book.
 - Q. Where is that pad?
 - A. Oh, we have scratch-pads up on the bridge.
 - Q. Where is it now?
 - A. I don't know where it is now.
- Q. But this was entered in the book right at the time? A. Yes, sir. [314]
- Q. But this was not entered in the book at that time? A. No, not immediately.
 - Q. Why not?
 - A. Because I had not got that written up yet.
 - Q. When did you enter this on the book?
- A. I entered that after I finished copying that down.
 - Q. And when did you finish copying that down?
 - A. Right after the collision.

- Q. How long afterwards? A. About an hour.
- Q. Was it an hour afterwards?
- A. About that; yes, sir.
- Q. Where were you when you wrote it up?
- A. On the bridge.
- Q. You were on the bridge? A. Yes, sir.
 - Q. Who was with you when you wrote it up?
 - A. Who was with me on the bridge?
 - Q. Yes. A. I was by myself.
- Q. At the time of the collision you were too busy, were you not, to be taking any scratch notes?
- A. I took them down afterwards, I took a memo. of them.
 - Q. You took them down after the collision?
 - A. Yes, sir.
- Q. And you made estimates of these different times you have entered?
 - A. I took the time, yes, sir.
- Q. You made estimates after the collision was over of the different times and put them down on the scratch-pad; is that right? A. Yes, sir.
- Q. When you were off Point Arena, as I understand it, the fog was thick enough so at a mile distant you could not see the lighthouse, but you could see the point; is that so?
- A. We could see over a mile then when we were off Point Arena.
- Q. I am asking you if at a mile distant you could see the point? A. You mean from the land?
 - Q. Yes. A. We could see further than a mile.
 - Q. How far could you see, a mile and a half? [315]

- A. Around 3 or 4 miles.
- Q. I thought you said you were only a mile and a half from the lighthouse and could not see it?
- A. I did not say we were a mile and a half from the lighthouse.
- Q. How far were you from the lighthouse at the time?
 - A. Approximately about $2\frac{1}{2}$ miles off it.
 - Q. $2\frac{1}{2}$ miles off it? A. Yes, sir.
 - Q. Was that the usual distance?
 - A. Well, we pass about 3 miles off.
- Q. Had you set your course to pass it $2\frac{1}{2}$ miles or 3 miles off when you came down there?
- A. The course had been set to pass it, yes, sir. That is the regular course that carries us past it.
 - Q. About 2½ miles?
- A. 3 miles, anywhere in the neighborhood of 3 miles.
- Q. Would you say 3 miles or $3\frac{1}{2}$ miles or $2\frac{1}{2}$ miles? How would you expect to strike it there?
 - A. About 3 miles off.
- Q. Then you were not, as the captain says, about a mile in from your regular course?
 - A. A mile from the lighthouse?
 - Q. No, a mile inshore from your regular course.
- A. If we were only $2\frac{1}{2}$ miles off we were inside our regular course; yes, sir.
 - Q. Were you a mile inside it?
- A. I did not measure it, or anything; I don't know that it was a mile, but I know it was inside.
 - Q. Can't you tell a mile at sea when you see it be-

(Testimony of Joseph W. Ettershank.) tween $2\frac{1}{2}$ and $3\frac{1}{2}$ miles off?

- A. Yes, approximately.
- Q. Approximately? A. I can judge it.
- Q. You think it might be a mile or it might be ½ a mile, or what? [316]
 - A. In the neighborhood of ½ or ¾ of a mile.
- Q. You could not tell within a quarter of a mile the distance?

 A. I could not swear to it.
- Q. Could you tell the difference between $\frac{1}{2}$ a mile and a mile, to swear to it?
 - A. That we were inside?
 - Q. Yes. A. Yes, sir.
- Q. You think it might be a mile or it might be $\frac{1}{2}$ a mile? A. I would say between that.
 - Q. Between those two?
 - A. Yes, sir, somewheres around there.
- Q. Now, as I understand it, when the vessel came in sight from you you at once ported your helm and blew one blast?
 - A. One blast of the whistle, yes, to indicate—
- Q. (Intg.) Just a moment. Just follow me in my questions. And you ran on then for a number of seconds? A. Yes, sir.
- Q. And you blew a second one blast and put your helm hard over; you first put it over to port?
 - A. Yes.
- Q. And when you gave the second blast you put it hard over?
- A. Yes, sir; the captain gave the order; I didn't give it.
 - Q. Well, you heard it? A. Yes, sir.

- Q. You are sure you heard it? A. Yes, sir.
- Q. You swear to that? A. Yes, sir.
- Q. That was a few seconds after the first one?
- A. Yes, sir.
- Q. And then almost immediately after that you noticed the "Necanicum" turning into you?
 - A. No, sir, she blew a whistle to us.
- Q. I say almost immediately you saw her turning in when that whistle blew?
 - A. When we were hard over.
- Q. You were hard over. You did not put your wheel hard over until you saw her turning into you? The reason you put your wheel hard over was because you saw the "Necanicum" turning into you; was not that it? A. Yes, sir. [317]
- Q. And you felt then that as she had turned toward you, you were likely to have a collision and it was necessary to put it hard over to avoid being run into; that is right, is it not? A. Yes, sir.
- Q. And then almost immediately after you gave full speed astern, did you not? A. Yes, sir.
- Q. That is to say, there was not more than 15 seconds between putting your helm hard over and going full speed astern, was there?
 - A. About that, I guess.
 - Q. How was your vessel loaded on that day?
 - A. The draught, do you mean?
 - Q. Yes. I don't want it exactly, but just about.
- A. Coming south all the time we are loaded from 16 to 18 feet forward and draw from 19 to 20 aft.
 - Q. That is to say, there was a difference of say 2 or

3 feet between forward and aft?

- A. Yes. You always have her down by the stern 2 or 3 feet.
 - Q. That is her best steering condition, is it?
 - A. Yes, sir, she steers better.
 - Q. How did she steer on that day?
 - A. She was steering good.
 - Q. She is pretty quick on the helm, is she not?
 - A. Yes, sir.
- Q. Immediately after the collision it was your duty, was it not, under the law, to stand by until you saw that the "Necanicum" did not require any aid?
 - A. We could see when she left us there—
 - Q. (Intg.) I say that is your duty, is it not?
 - A. Yes, sir.
- Q. Did you look to see whether she required any assistance?
- A. We could see that she was flying light. The stem of the ship was busted up a little. That is all we could notice.
- Q. The upper part of the stem? A. Yes, sir. [318]
 - Q. Not down by the lower part?
- A. No, sir, it was just by the fore-foot, where she turns there.
- Q. Would you agree with the captain that she was not injured 10 feet above the water-line?
 - A. Well, I did not-
- Q. (Intg.) You did not notice that particularly, did you? A. No, sir.
 - Q. You did not notice particularly the condition of

the bow of the vessel?

- A. Yes, sir, I seen the bow. You mean the "Necanicum," do you?
 - Q. Yes, the "Necanicum."
- A. Yes, sir, I could see her bow. The stem was all that was busted up.
 - Q. That is, the upper part or the lower part?
 - A. Well, halfway up.
 - Q. From halfway up up to the top?
- A. Yes, sir, because she turns like that you know, rounded.
- Q. But you would say that for 10 feet above the water-line she had no injury at all?
- A. Well, somewheres around there, 6 or 8 feet I guess from the water-line.
- Q. You did not leave her though until she disappeared in the fog, did you? A. No, sir.
- Q. And she disappeared in the fog before you gave your bells full speed ahead, did she not?
- A. We started to straighten the ship out; we were away off our course and we gave a starboard helm to go ahead and straighten her out.
 - Q. You were not away off your course, were you?
 - A. We were naturally away off our course.
- Q. You said away off your course; you meant that, didn't you? A. We were off our regular course.
- Q. And you could not come around under say half speed, but you felt you were so far off that you had to go full speed to get her around; is that it? [319]
- A. Well, the ship was practically stopped then; you had to get some headway on her to make her steer.

- Q. Practically stopped, was she? How much way did you have on, do you think?
 - A. At what time do you mean?
- Q. When you started to go ahead after the collision?
 - A. We did not have much, we had very little way.
- Q. You say the "Necanicum" had disappeared before you left that neighborhood—in the fog; how long before you left had she disappeared? You did not desert her while she was in sight of you, did you? You could not do that, could you?
 - A. We could not, no.
- Q. How long before you left had she disappeared in the fog?
- A. It was only the matter of a few minutes. The fog came down.
- Q. You say a few minutes; as a matter of fact, before you gave your bells full speed ahead to continue on your course she had disappeared in the fog, had she not?
- A. About the same time, yes, sir, when she disappeared.
- Q. You did not give your bells full speed ahead and leave her there when she was in sight, did you?
 - A. What is that?
- Q. You didn't give your bells full speed ahead and desert her there when she was in sight, did you?
 - A. We straightened out our course.
- Q. How long did it take you to straighten her out on her course? A. It took 2 or 3 minutes.
 - Q. Don't you know, as a matter of fact, it only

(Testimony of Joseph W. Ettershank.) took you a minute to do it?

- A. She would not come back on her course in a minute.
 - Q. She would not; she was that far off, was she?
- A. It took a minute and a half or 2 minutes anyway.
- Q. Don't you know that the bells on your ship at the moment [320] of the collision were full speed ahead, and a minute after that half speed; were not those the bells that were given from the bridge?
 - A. Full speed ahead at the time of the collision?
 - Q. Just a moment after the collision?
 - A. No, sir.
- Q. How long after the collision did you give the bells full speed ahead?
- A. The captain was handling the telegraph then after we hit.
- Q. I know, but you could hear it ring, could you not?
 - A. Yes, I could hear it ring, certainly I could.
- Q. How soon after the collision did you give full speed ahead? A. Right after the collision.
 - Q. Immediately after the collision, was it not?
 - A. Yes, sir.

The COURT.—We will take a recess now until 2 o'clock.

(A recess was here taken until 2 p. m.) [321]

AFTERNOON SESSION.

JOSEPH W. ETTERSHANK, cross-examination resumed.

Mr. DENMAN.—Q. I want to ask you what exam-

(Testimony of Joseph W. Ettershank.) ination you made of your vessel after the collision occurred.

- A. I had the carpenter sound the bilges and the mate look over the bow. He went forward. He came back and told the captain the damage was above the water-line. The carpenter come back and said there was no water in the No. 1 bilges.
- Q. Did you go out to the side of the bridge and look to see what damage had been done?
 - A. I cannot see from the bridge.
- Q. I say did you go out to the side of the bridge and try to look at the injury on the bow
- A. From the corner of the bridge you could see the rail all cut; the damage was on top.
- Q. You noticed the vessels when they were coming together at that point, did you? A. Yes, sir.
- Q. Do you recall which vessel was the higher vessel of the two? A. Well, I should say—
- Q. Let me change that question. Which vessel had the forecastle-head the higher above the water?
- A. The "Necanicum" because she cut our top rail off.
 - Q. She cut your top rail off? A. Yes, sir.
- Q. Now, to come back, you say that the carpenter made an examination by sounding the bilges?
 - A. Yes, sir.
 - Q. What did he report?
 - A. He said they were making no water.
- Q. That was done almost immediately after the collision, was it not? A. Yes, sir.
 - Q. In the meanwhile you and the captain examined

(Testimony of Joseph W. Ettershank.) the stem of the "Necanicum" to see whether you had to stand by her? A. We could see it, yes, sir.

- Q. I mean you examined it for the purpose of seeing whether [322] you had to stand by?
- A. We could see there were no planks torn loose from the stem, or nothing; it was just the stem slivered.
- Q. Did you notice any cracks on the side? Did you see those? A. What do you mean?
- Q. Any cracks on the side of the vessel, the mashing in of the stem? A. We could not see any.
- Q. Could you see them anyway at 100 yards distance?
- A. If they were big or if they were open; the planks would have been separated and then we could notice them.
- Q. They might have been small and still admit water? A. Yes, they might have been small.
- Q. Coming back to the condition of the weather, at the time that you passed Point Arena, as I understand it, you say that the fog was then obscuring the lighthouse at the point? A. Yes, sir.
- Q. But you did not think it was necessary to call the captain at that time?
 - A. The captain was around then.
 - Q. The captain was around then?
 - A. Sure, changing the course.
- Q. Would you have called him if he had not been around, on account of the fog?
 - A. Yes, sir, it is a standing order.
 - Q. It is a standing order? A. Yes, sir.

Q. You say that the fog continued light like that until you called the captain up?

A. Yes—no, for 3 or 4 miles you could see. It was clearer offshore than it was inshore.

Q. I am now talking about the time between passing Point Arena and the time you called the captain; you had the fog up and down, did you not, during that period of time? A. Yes, sir.

Q. Sometimes it set in thicker than at others and finally at 2:05 it began to set in thick and you called the captain? A. Yes, sir. [323]

Q. And although the fog was rising and falling up to that time you had not thought it necessary to call him?

A. He knew the condition of the weather himself.

Q. What did you call him for then?

A. Because it was getting thicker.

Q. You used the expression this morning "shutting in thick"; that is correct, is it?

A. Shutting in thick, yes, sir.

Q. When your vessel is going full speed ahead and the order is given full speed astern with your helm hard aport, does she turn more rapidly or less rapidly with the reversing propeller?

A. With the helm hard aport and going astern that would help her more to swing to starboard.

Q. The fact is she would swing very fast, would she not? A. Yes, sir.

Q. You remember testifying in the "Beaver"— "Selje" case, do you not, on that point?

A. Yes, sir.

- Q. Before she would stop, it is a fact, is it not, that she would go over somewhere about 4 points, swinging on that helm, going from full speed ahead to full speed astern; that is right, is it not?
 - A. That she would swing 4 points?
 - Q. Yes. A. She did not do it that day.
- Q. She did on the day of the "Beaver"—"Selje" collision, did she not?
 - A. She was swinging good then, yes, sir.
- Q. She swung about 4 points on the day of the "Beaver"—"Selje" collision, did she not?
 - A. Around in that neighborhood, yes, sir.
- Q. I want you to describe the conditions of her swinging on the day of the "Beaver"—"Selje" collision; you remember the speed you were going at, do you not? A. Yes, sir.
 - Q. 77 revolutions, was it not?
 - A. Do I have to answer these questions? [324]
 - Q. Oh, yes.
 - A. That has nothing to do with this.

Mr. CAMPBELL.—Mr. Ettershank, you answer every question you are asked by counsel; the Court will tell you and will tell us when a question is not to be answered.

Mr. DENMAN.—Q. You were making 77 revolutions on that day, were you not?

- A. Something like that, sir.
- Q. And you were running about a little over a minute before you struck the "Selje," were you not?
 - A. Yes, sir.